

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

NOTICE OF PROPOSED RULEMAKING

TITLE 7. EDUCATION

CHAPTER 1. STATE BOARD OF DIRECTORS FOR COMMUNITY COLLEGES OF ARIZONA

PREAMBLE

1. Sections Affected:

R7-1-902
R7-1-902.01
R7-1-902.02
R7-1-902.03
R7-1-902.04
R7-1-902.05
R7-1-902.06

Rulemaking Action:

New Section
New Section
New Section
New Section
New Section
New Section
New Section

2. The specific authority for the rulemaking, including both the authorizing statute and the statutes the rules are implementing:

Authorizing statute: A.R.S. § 15-1424(B)(6)

Implementing statute: A.R.S. § 15-1424(B)(6)

3. A list of all previous notices appearing in the Register addressing the proposed rule:

Notice of Rulemaking Docket Opening: 8 A.A.R. 1553, March 29, 2002

Notice of Emergency Rulemaking: 8 A.A.R. 1712, April 5, 2002

Notice of Emergency Rulemaking: 7 A.A.R. 4272, September 28, 2001

4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Mary Jo Saiz, Interim Associate Executive Director

Address: State Board of Directors for Community Colleges of Arizona
2020 N. Central Ave., Suite 570
Phoenix, AZ 85004

Telephone: (602) 255-4037

Fax: (602) 279-3464

5. An explanation of the rule, including the agency's reasons for initiating the rule:

Pursuant to A.R.S. § 15-1424 the State Board has the authority to adopt rules concerning and prescribing the limitations on contracting by the community college district governing boards.

This rule will provide a process by which the community college districts may procure construction and construction related services.

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6. A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:

None

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

The rule will not diminish any grant of authority.

8. The preliminary summary of the economic, small business and consumer impact:

The proposed rule will not adversely impact small business or consumers.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Mary Jo Saiz, Interim Associate Executive Director

Address: State Board of Directors for Community Colleges of Arizona
2020 N. Central Ave., Suite 570
Phoenix, AZ 85004

Telephone: (602) 255-4037

Fax: (602) 279-3464

10. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Date: June 21, 2002

Time: 1:00 p.m.

Place: 2020 N. Central, Suite 1220, Phoenix, AZ 85004

Nature: Public Hearing at State Board Meeting

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

12. Incorporations by reference and their location in the rules:

This rule incorporates A.R.S. §§ 35-214, 34-222(G), 34-608(G),
Title 20, Chapter 2, Article 1,
Title 34, Chapter 2,
Title 34, Chapter 6, Article 2,
Title 32, Chapter 1, and
Title 33, Chapter 10.

13. The full text of the rules follows:

TITLE 7. EDUCATION

CHAPTER 1. STATE BOARD OF DIRECTORS FOR COMMUNITY COLLEGES OF ARIZONA

ARTICLE 9. LAND AND BUILDINGS

Section

R7-1-902.	Renumbered Procurement of Construction and Construction Services for Community College Districts
<u>R7-1-902.01.</u>	<u>Source Selection and Contract Formation</u>
<u>R7-1-902.02.</u>	<u>Source Selection and Contract Formation Administrative</u>
<u>R7-1-902.03.</u>	<u>Specifications</u>
<u>R7-1-902.04.</u>	<u>Procurement of Construction Services</u>
<u>R7-1-902.05.</u>	<u>Procurement of Construction Services Administrative</u>
<u>R7-1-903.06.</u>	<u>Legal and Contractual Remedies</u>

ARTICLE 9. LAND AND BUILDINGS

R7-1-902. ~~Renumbered~~ Procurement of Construction and Construction Services for Community College Districts

A. General Provisions and General Definitions

1. Upon approval of construction projects by the State Board of Directors for Community Colleges of Arizona, the State Board of Directors for Community Colleges of Arizona hereby authorizes community college districts to procure construction and construction services.
2. This Article shall consist of rules prescribing construction and construction services procurement policies and procedures, and shall be known as the "State Community College System Construction Services Procurement Code."
3. Minor construction, remodeling and repair projects as defined in A.R.S. § 15-1424 M(1) are not subject to this rule.
4. A district representative shall neither award a contract nor incur an obligation on behalf of the community college district unless sufficient funds are available for the specific procurement.
5. Definitions. In this Article, unless the context otherwise requires:
 - a. "District Governing Board" means the District Governing Board, President, Chancellor or its designee.
 - b. "District Representative" means the employee of the community college district duly authorized to conduct the procurement of construction, construction services and design services.
 - c. "Bidder prequalification" means determining in accordance with rules adopted pursuant to this Chapter that a prospective bidder or offeror satisfies the criteria for being included on the bidder's list.
 - d. "Construction-manager-at-risk" means a project delivery method in which:
 - i. There is a separate contract for design services and a separate contract for construction services.
 - ii. The contract for construction services may be entered into at the same time as the contract for design services or at a later time.
 - iii. Design and construction of the project may be in sequential phases or concurrent phases.
 - iv. Finance services, maintenance services, operations services, preconstruction services and other related services may be included.
 - e. "Cost-incentive contract" means a construction contract with provision for the adjustment of profit or price by a formula based on exceeding specific, pre-determined targets for schedule, technical performance, or other goals with a measurable benefit to the Community College District. The formula for determining the incentive amount as well as the maximum incentive that the contractor may earn shall be defined in the original contract for the project.
 - f. "Cost-reimbursement contract" means a contract under which a contractor is reimbursed for costs which are reasonable, allowable and allocable in accordance with the contract terms and the provisions of this Chapter, and paid a fee, if provided for in the contract.
 - g. "Demonstration project" means a project in which a vendor supplies a service or material to this community college district for which the community college district does not pay but for which this community college district may be obligated to provide routine support such as utility cost and operating personnel.
 - h. "Design-bid-build" means a project delivery method in which:
 - i. There is a sequential award of two separate contracts.
 - ii. The first contract is for design services.
 - iii. The second contract is for construction.
 - iv. Design and construction of the project are in sequential phases.
 - v. Finance services, maintenance services and operations services are not included.
 - i. "Design-build" means a project delivery in which:
 - i. There is a single contract for design services and construction services.
 - ii. Design and construction of the project may be in sequential phases or concurrent phases.
 - iii. Finance services, maintenance services, operations services, preconstruction services and other related services may be included.
 - j. "Established catalogue price" means the price included in a catalogue, price list, schedule or other form that:
 - i. Is regularly maintained by a manufacturer, distributor or contractor.
 - ii. Is either published or otherwise available for inspection by customers.
 - iii. States prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the materials or services involved.
 - k. "Invitation for bids" means all documents, whether attached or incorporated by reference, which are used for soliciting bids in accordance with the procedures prescribed in R7-1-902.01(B).
 - l. "Job-order-contracting" means a project delivery method:
 - i. The contract is a requirements contract for indefinite quantities of construction.
 - ii. The construction to be performed is specified in job orders issued during the contract.

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- iii. Finance services, maintenance services, operations services, preconstruction services, design services and other related services may be included.
- m. "Purchase description" means the words used in a solicitation to describe the materials, services or construction for purchase and includes specifications attached to, or made a part of, the solicitation.
- n. "Request for information" means all documents issued to vendors for the sole purpose of seeking information about the availability in the commercial marketplace of materials or services.
- o. "Request for proposals" means all documents, whether attached or incorporated by reference, which are used for soliciting proposals.
- p. "Responsible bidder or offeror" means a person who has the capability to perform the contract requirements and the integrity and reliability that will assure good faith performance.
- q. "Responsive bidder" means a person who submits a bid, which conforms in all material respects to the invitation for bids.
- r. "Unsolicited proposal" means a written proposal that is submitted on the initiative of the offeror for the purposes of obtaining a contract with this community college district and that is not in response to a formal or informal request from this community college district.
- s. "Bid sample" means an item furnished by a bidder to show the characteristics of the item offered in the bid.
- t. "Capability" means capability at the time of contract award.
- u. "Clarification" means written or oral communication with a bidder or offeror, including demonstrations or questions and answers, for the sole purpose of information gathering or of eliminating minor informalities or correcting nonjudgmental mistakes in a bid or proposal. Clarification does not otherwise afford the bidder or offeror the opportunity to alter or change its bid or proposal.
- v. "Cost" means the aggregate cost of all materials and services.
- w. "Cost analysis" means the evaluation of cost data.
- x. "Cost data" means information concerning the actual or estimated cost of labor, material, overhead, and other cost elements that have been actually incurred or that are expected to be incurred by the contractor in performing the contract.
- y. "Cost-plus-a-percentage-of-cost contract" means a contract that, prior to completion of the work, the parties agree that the fee will be a predetermined percentage of the total cost of the work.
- z. "Defective data" means data that is inaccurate, incomplete or non-current.
- aa. "Descriptive literature" means information available in the ordinary course of business that shows the characteristics, construction, or operation of an item offered in a bid or proposal.
- bb. "Discussions" means oral or written negotiations between the community college district or its designee and an offeror during which information is exchanged about specifications, scope of work, terms and conditions and price set forth in the initial proposal. Communication with an offeror for the sole purpose of clarifications does not constitute "discussions".
- cc. "Incremental award" means an award of portions of a definite quantity requirement to more than one contractor. Each portion is for a definite quantity and the sum of the portions is the total definite quantity required.
- dd. "Minor informality" means mistakes, excluding judgmental errors, that have negligible effect on price, quantity, quality, delivery, or other contractual terms and the waiver or correction of which does not prejudice other bidders or offerors.
- ee. "Multiple award" means an award of separate contracts for an indefinite quantity for one or more similar materials or services to more than one bidder or offeror.
- ff. "Price analysis" means the evaluation of price data.
- gg. "Price data" means information concerning prices, including profit, for materials, services, or construction substantially similar to those being procured under a contract or subcontract. In this definition, "prices" refers to offered or proposed selling prices, historical selling prices, or current selling prices of the items being purchased
- hh. "Solicitation" means an Invitation for Bids, a Request for Technical Offers, a Request for Proposals, a Request for Quotations, or any other invitation or request by which the community college district or its designee invites a person to participate in a procurement.
- ii. "Technical offer" means unpriced written information from a prospective contractor stating the manner in which the prospective contractor intends to perform certain work and its qualifications.

R7-1-902.01. Source Selection and Contract Formation

A. Methods of Source Selection

Unless otherwise authorized by law, all community college district contracts shall be awarded by competitive sealed bidding as provided in subsection (B), except as provided in subsections (C), (D), and R7-1-902.04(F).

B. Competitive Sealed Bidding

1. Contracts shall be awarded by competitive sealed bidding except as otherwise provided in subsection (A).

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2. An invitation for bids shall be issued and shall include a purchase description and all contractual terms and conditions applicable to the procurement.
3. In all competitive sealed bidding procurements, the district representative shall issue an Invitation for Bids on a form approved by the District Governing Board. Invitation for Bids shall be issued at least 14 days before the time and date set for bid opening in the Invitation for Bids unless a shorter time is deemed necessary for a particular procurement as determined in writing by the district representative. A copy of the Invitation for Bids shall be made available for public inspection at the community college district office. The notice may include publication one or more times in a newspaper of general circulation a reasonable time before bid opening. If the invitation for bids is for the procurement of services other than those described in R7-1-902.04(F), the notice shall include publication in a single newspaper or in multiple newspapers within this state. The notice may also be posted at a designated site on a worldwide public network of interconnected computers.
4. Bids shall be opened publicly at the time and place designated in the invitation for bids. The amount of each bid and such other relevant information as may be specified by rule, together with the name of each bidder shall be recorded. This record shall be open to public inspection at the bid opening in a manner prescribed by rule. The bids shall not be open for public inspection until after a contract is awarded. Except to the extent the bidder designates and the district representative concurs, trade secrets or other proprietary data contained in the bid documents shall remain confidential in accordance with rules adopted by the District Governing Board.
5. Bids shall be unconditionally accepted without alteration or correction, except as authorized in this Chapter. Bids shall be evaluated based on the requirements set forth in the invitation for bids, including criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery and suitability for a particular purpose, as prescribed in rules adopted by the District Governing Board. The invitation for bids shall set forth the evaluation criteria to be used, including the weighting of identified criteria. Evaluation criteria shall not be used for construction and no criteria may be used in bid evaluation that is not set forth in the invitation for bids.
6. The correction or withdrawal of erroneous bids before or after bid opening, based on bid mistakes, may be permitted in accordance with rules adopted by the District Governing Board. After bid opening, no corrections in bid prices or other provisions of bids prejudicial to the interest of this community college district or its designee or fair competition shall be permitted. Except as otherwise provided by rule, all decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the district representative.
7. The contract shall be awarded to the lowest responsible and responsive bidder whose bid conforms in all material respects to the requirements and criteria set forth in the invitation for bids. The amount of any applicable transaction privilege or use tax of a political subdivision of this state is not a factor in determining the lowest bidder. If all bids for a construction project exceed available monies as certified by the appropriate fiscal officer, and the low responsive and responsible bid does not exceed such monies by more than five percent, the district representative may in situations in which time or economic considerations preclude resolicitation of work of a reduced scope negotiate an adjustment of the bid price, including changes in the bid requirements, with the low responsive and responsible bidder, to bring the bid within the amount of available monies.

C. Sole Source Procurement

A contract may be awarded for a material, service or construction item without competition if the district representative determines in writing that there is only one source for the required material, service or construction item. The district representative may require the submission of cost or pricing data in connection with an award under this Section. Sole source procurement shall be avoided, except when no reasonable alternative sources exist. A written determination of the basis for the sole source procurement shall be included in the contract file.

D. Emergency procurements

Notwithstanding any other provision of this Chapter, the district representative may make or authorize others to make emergency procurements if there exists a threat to public health, welfare, or safety or if a situation exists which makes compliance with subsection (B) impracticable, unnecessary or contrary to the public interest as defined in rules adopted by the District Governing Board, except that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file.

E. Cancellation of invitation for bids or requests for proposals

An invitation for bids, a request for proposals or other solicitation may be cancelled or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation if it is in the best interests of the community college district or its designee. The reasons for the cancellation or rejection shall be made part of the contract file.

F. Responsibility of Bidders and Offerors

1. A written determination of nonresponsibility of a bidder or offeror shall be made in accordance with rules adopted by the District Governing Board. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility shall be grounds for a determination of nonresponsibility with

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respect to the bidder or offeror. A finding of nonresponsibility shall not be construed as a violation of the rights of any person.

2. Information furnished by a bidder or offeror pursuant to this Section shall not be disclosed outside of the office of the district representative without prior written consent by the bidder or offeror except to law enforcement agencies.

G. Types of Contracts

1. Subject to the limitations of this Section, any type of contract that will promote the best interests of the community college district may be used. The use of cost-plus-a-percentage-of-cost contract is prohibited, except for job-order contracting. A cost-reimbursement contract may be used only if a determination is made in writing that such contract is likely to be less costly to the community college district than any other type or that it is impracticable to obtain the materials, services or construction required except under such a contract.
2. Any bid or proposal that is conditioned upon award to the bidder or offeror of both the particular contract being solicited and another community college contract shall be deemed nonresponsive or unacceptable.

H. Right to audit records

1. The community college district may, at reasonable times and places, audit the books and records of any person who submits cost or pricing to the extent that the books and records relate to the cost or pricing data. Any person who receives a contract, change order or contract modification for which cost or pricing data is required shall maintain the books and records that relate to the cost or pricing data for five years after the completion of the contract pursuant to A.R.S. § 35-214.
2. The community college district is entitled to audit the books and records of a contractor or any subcontractor under any contract or subcontract to the extent that the books and records relate to the performance of the contract or subcontract. The books and records shall be maintained by the contractor for a period of five years after the completion of the prime contract pursuant to A.R.S. § 35-214 and by the subcontractor for a period of five years after the completion of the subcontract pursuant to A.R.S. § 35-214.

R7-1-902.02. Source Selection and Contract Formation Administrative

A. Extension of Offer Acceptance Time

After opening of bids or proposals, the district representative may request bidders or offerors who have submitted timely bids or proposals to extend, in writing, the time during which the community college district or its designee may accept their bids or proposals. It is not necessary to receive a written concurrence from all bidders or offerors to award a contract. A written concurrence is required from those bidders or offerors who are to be awarded a contract and that concurrence must be received by the district representative before the original bid or proposal expires.

B. Assignment of Rights and Duties

The rights and duties of a community college district contract are not transferable or otherwise assignable without the written consent of the District Governing Board.

C. Change of Name

1. If a contractor requests to change the name in which it holds contract, the procurement officer may, upon receipt of a document indicating name change, enter into a written amendment with the contractor to effect the name change. The amendment shall provide that no other terms and conditions of the contract are changed.
2. All change of name amendments shall be reported to the district representative before the date that the amendment becomes effective.

D. Purchase of Items Separately from Construction Contract

The determination whether materials shall be procured as part of or separate from construction contract shall only be made by the district representative.

E. Contract Change Orders and Amendments

Any contract change order or amendment that exceeds \$100,000 may be executed only if the district representative determines in writing that the change order or amendment is advantageous to the community college district. This rule shall not apply to the extension of a contract the price of which was competed and evaluated under the contractor's original bid or proposal.

F. Pre-bid Conferences

A district representative may conduct a pre-bid conference within a reasonable time but not less than seven days before the bid opening to explain the procurement requirements. Statements made at the pre-bid conference shall not be considered amendments to the invitation for bids unless a written amendment is issued pursuant to subsection (G).

G. Amendments to Invitations for Bids

1. An amendment to an Invitation for Bids shall be issued if necessary to:
 - a. Make changes in the Invitation for Bids;
 - b. Correct defects or ambiguities; or
 - c. Furnish to other bidders information given to one bidder if the information will assist the other bidders in submitting bids or if the lack of the information will prejudice the other bidders.

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2. Amendments to Invitations for Bids shall be so identified and shall be sent to all persons to whom the district representative distributed an Invitation for Bids.
3. Amendments shall require that the bidder acknowledge receipt of the amendment by signing and returning the amendment with the bid or before the time and date set for opening or acknowledging the receipt of the amendment on the proposal or bid form.
4. Amendments shall be issued within a reasonable time before bid opening to allow prospective bidders to consider them in preparing their bids. If the time and date set for bid opening does not permit sufficient time for bid preparation, the time and date for bid opening shall be extended in the amendment or, if necessary, by fax, telephone, or electronic means and confirmed in the amendment.

H. Pre-opening Modification or Withdrawal of Bids

1. A bidder may modify or withdraw its bid at any time before bid opening if the modification or withdrawal is received in writing before the time and date set for bid opening in the location designated in the Invitation for Bids for receipt of bids. A bidder or the bidder's authorized representative may withdraw the bid in person if, before the time and date set for bid opening, the identity of the person requesting withdrawal is established and that person signs a receipt for the bid.
2. All documents concerning a modification or withdrawal of a bid shall be retained in the appropriate procurement file.

I. Late Bids, Late Withdrawals, and Late Modifications

1. A bid, modification or withdrawal is late if it is received at the location designated in the Invitation for Bids for receipt of bids after the time and date set for bid opening.
2. A late bid, late modification, or late withdrawal shall be rejected unless the bid, modification, or withdrawal is received before contract award at the location designated in the Invitation for Bids for receipt of bids and would have been timely received but for the action or inaction of community college district personnel directly serving the community college district or its designee.
3. Bidders submitting bids, modifications or withdrawals that are rejected as late shall be so notified as soon as practicable.
4. Documentation concerning a late bid, late modification, or late withdrawal shall be retained in the appropriate procurement file.

J. Receipt, Opening, and Recording of Bids

1. Except as provided in subsection (J)(2), each bid and modification shall be time-stamped upon receipt and stored unopened in a secure place until the time and date set for bid opening.
2. An envelope that is not marked as a bid or does not identify the bidder or solicitation may be opened solely for the purpose of identification. Record shall be made on the envelope of the reason for opening it, the date and time it was opened, the solicitation to which the bid responded, and the signature of the person who opened the envelope. The envelope shall be resealed and retained in the procurement file.
3. Bids and modifications shall be opened publicly and in the presence of one or more witnesses at the time, date, and location designated in the Invitation for Bids for bid opening. The name of each bidder, the bid price, and other information deemed appropriate by the district representative shall be read aloud and recorded on a bid abstract. The name of the required witness shall also be recorded. The bid abstract shall be available for public inspection.
4. Bids shall not be available for public inspection before contract award pursuant to R7-1-902.01(B)(4). After contract award, the bids shall be available for public inspection, except to the extent that the withholding of information is permitted or required by law. If the bidder designates a portion of its bid as confidential, it shall isolate and identify in writing the confidential portions.

K. Mistakes in Bids

1. A bidder may correct mistakes discovered before the time and date set for bid opening by withdrawing or correcting the bid as provided in subsection (H), and then properly resubmitting the bid prior to the date and time it is due.
2. After bid opening, a bid mistake based on an error in judgment may not be corrected or withdrawn. Other bid mistakes may be corrected or withdrawn pursuant to subsections (K)(3) through (K)(5).
3. After bid opening, the district representative shall either waive minor informalities in a bid or allow the bidder to correct them if correction is advantageous to the community college district.
4. After bid opening, the bid may not be withdrawn and shall be corrected to the intended bid if a bid mistake and the intended bid are evident on the face of the bid.
5. After bid opening, the district representative may permit a bidder to withdraw a bid if:
 - a. A non-judgmental mistake is evident on the face of the bid but the intended bid is not evident; or
 - b. The bidder establishes by clear and convincing evidence that a nonjudgmental mistake was made.
6. Mistakes shall not be corrected after award of the contract except district representative makes a written determination that it would be unconscionable not to allow the mistake to be corrected.
7. If correction or withdrawal of a bid after bid opening is permitted or denied under subsections (K)(4) and (K)(5), the district representative shall prepare a written determination showing that the relief was permitted or denied under these rules and regulations.

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L. Bid Award

The contract shall be awarded to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the Invitation for Bids. Unless otherwise provided in the Invitation for Bids, award may be made by individual line item, by group of line items, or for the aggregate total of all line items.

M. Only One Bid Received

If only one responsive bid is received in response to an Invitation for Bids, an award may be made to the single bidder if the district representative determines in writing that the price submitted is fair and reasonable, and that either other prospective bidders had reasonable opportunity to respond, or there is not adequate time for resolicitation. Otherwise the bid may be rejected pursuant to the provisions of R7-1-902.01(E) and:

1. New bids may be solicited; or
2. The proposed procurement may be cancelled; or
3. If the district representative determines in writing that the need for the material or service continues and the acceptance of the one bid is not advantageous to the community college district, the procurement may then be conducted under R7-1-902.01(C) and R7-1-902.01(D) as appropriate.

N. Request for Proposals

1. Request for Proposals shall set forth those factors listed in R7-1-902.01(B) that are applicable and shall also state:
 - a. The type of materials or services required and a description of the work involved;
 - b. The type of procurement method to be used;
 - c. Whether cost or pricing data is required;
 - d. That offerors may designate as trade secrets or proprietary data portions of the proposals;
 - e. That discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being selected for award;
 - f. The minimum information that the proposal shall contain; and
 - g. The closing date and time for receipt of proposals.
2. A Request for Proposals shall be issued at least 14 days before the closing date and time for receipt of proposals unless a shorter time is determined necessary in writing by the district representative.
3. Request for Proposal forms shall be approved by district representative.
4. Notice of the Request for Proposals shall be issued in accordance with R7-1-902.01(B)(3).
5. Before submission of initial proposals, amendments to Requests for Proposals shall be made in accordance with subsection (G).

O. Pre-proposal Conferences

Pre-proposal conferences may be convened in accordance with subsection (F).

P. Late Proposals, Late Modifications or Late Withdrawals

1. A proposal received after the closing date and time for receipt of proposals is late and shall not be considered except under the circumstances set forth in subsection (I)(2). A best and final offer received after the closing date and time for receipt of best and final offers is late and shall not be considered except under the circumstances set forth in subsection (I)(2).
2. A modification of a proposal received after the closing date and time for receipt of proposals is late and shall not be considered except under the circumstances set forth in subsection (I)(2).
3. A modification of a proposal resulting from an amendment issued after the closing date and time for receipt of proposals or a modification of a proposal resulting from discussions during negotiations shall be considered if received by the closing date and time set forth in the amendment or by the closing date and time for submission of best and final offers, whichever is applicable. If the modifications described in this subsection are received after the respective date and time described in this subsection, the modifications are late and shall not be considered except under the circumstances set forth in subsection (I)(2).
4. A proposal may be withdrawn at any time before the closing date and time for receipt of best and final offers. Withdrawal of a proposal after submission of best and final offers is permissible only in accordance with subsection (U).

Q. Receipt of Proposals

1. Each proposal received shall be date and time stamped and retained in a secure place until the closing date and time for receipt of proposals. A Register of Proposals shall be prepared and shall set forth the name of each offeror and the identity of the Request for Proposals for which the proposal was submitted.
2. Proposals shall be opened in the presence of witnesses. The name of each offeror shall be publicly read and recorded. Before contract award, proposals and modifications shall be shown only to community college district personnel having a legitimate interest in them or persons assisting the community college district or representative in evaluation.
3. If only one proposal is received in response to a Request for Proposals, the district representative may either make an award in accordance with subsection (V) or, if time permits, resolicit.

R. Evaluation of Proposals

1. Evaluation of the proposals shall be based on the valuation factors set forth in the Request for Proposals.

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2. For the purpose of conducting discussions, the district representative shall determine, in accordance with subsection (R)(1), that proposals are either reasonably susceptible of being selected for award or unacceptable. A determination that a proposal is unacceptable shall be in writing, state the basis of the determination, and be retained in the procurement file. If the district representative determines that an offeror's proposal is not reasonably susceptible of being selected for award, the district representative shall notify that offeror of the determination and that the offeror shall not be afforded an opportunity to modify its offer.

S. Discussions with Individual Offerors

The district representative shall establish procedures and schedules for conducting discussions. Disclosure of one offeror's price to another and any information derived from competing proposals is prohibited. The district representative shall keep a record of all discussions in a manner prescribed by the District Governing Board.

T. Best and Final Offers

If discussions are conducted pursuant to subsection (S), the district representative shall issue a written request for best and final offers. The request shall set forth the date, time and place for the submission of best and final offers. Best and final offers shall be requested only once, unless the district representative makes a written determination that it is advantageous to the community college district to conduct further discussions or change the community college district's requirements. The request for best and final offers shall inform offerors that, if they do not submit a notice of withdrawal or a best and final offer, their immediate previous offer will be construed as their best and final offer.

U. Mistakes in Proposals

1. Prior to the time and date set for receipt of best and final offers, any offeror with whom discussions have been held may withdraw the proposal or correct any mistake by modifying the proposal, and resubmitting before time and date it is due.
2. After receipt of best and final offers, an offeror may withdraw a proposal or correct a mistake in accordance with subsections (K)(2) through (K)(7).

V. Contract Award

1. The district representative shall award a contract to the offeror whose proposal is determined in writing to be most advantageous to the community college district based on the factors set forth in the Request for Proposals. The determination shall explain the basis of the award.
2. If the contract awarded exceeds \$100,000, each unsuccessful offeror shall be notified in writing of the award.
3. After contract award the proposals shall be open for public inspection except to the extent that the withholding of information is permitted or required by law. If the offeror designates a portion of its proposal as confidential, it shall isolate and identify in writing the confidential portions.

W. Responsibility of Bidders and Offerors

1. A district representative shall determine that a bidder or offeror is responsible before awarding a contract to that bidder or offeror. The District Governing Board's signature on the contract constitutes a determination that the bidder or offeror awarded the contract is responsible.
2. Factors to be considered in determining if a bidder or offeror is responsible include:
 - a. The bidder's or offeror's financial, physical, personnel or other resources, including subcontracts;
 - b. The bidder's or offeror's record of performance and integrity;
 - c. Whether the bidder or offeror is qualified legally to contract with the state; and
 - d. Whether the bidder or offeror supplied all necessary information concerning its responsibility.
3. The district representative may establish specific responsibility criteria for a particular procurement. Any specific responsibility criteria shall be set forth in the solicitation.
4. If a district representative determines that a bidder or offeror is nonresponsible, the determination shall be in writing and set forth the basis for the determination. A copy of the determination shall be promptly sent to the nonresponsible bidder or offeror. The final determination shall be made part of the procurement file.

X. Cost-reimbursement and Cost Incentive Contracts

A cost-reimbursement or cost incentive type contract may be used only when district representative determines in writing that the use of such contract is advantageous to the community college district.

Y. Time and Materials Contracts and Labor Hour Contracts

1. Time and materials and labor hour contracts shall, to the extent possible, contain a stated ceiling or an estimate of a contractual amount that shall not be exceeded without prior approval of the district representative.
2. A time and materials or labor hour contract may only be used if the district representative determines in writing that:
 - a. Personnel have been assigned to closely monitor the performance of the work; and
 - b. It is advantageous to the community college district to use such contract; and
 - c. No other contract type is practicable.

Z. Anticompetitive practices among bidders or offerors

Upon submitting a bid or offer, the bidder or offeror must certify that the submission of the bid or offer did not include collusion or other anticompetitive practices.

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R7-902.03. Specifications

A. Preparation of Specifications or Plans by Persons Other Than College Personnel

1. The district representative may contract for the preparation of specifications or plans for public contracts by persons other than College personnel including but not limited to architects, engineers, designers, and other draftsmen.
2. The requirements of this Article shall apply to all specifications or plans prepared by persons other than state personnel pursuant to subsection (A)(1). Contracts for the preparation of specifications or plans by persons other than state personnel shall require them to adhere to such requirements.

B. Conflict of Interest

1. No person preparing or assisting in the preparation of specifications, plans or scopes of work shall receive any direct benefit from the utilization of those specifications, plans or scopes of work.
2. A district representative may waive the restriction set forth in subsection (B)(1) if the district representative determines in writing that its application would not be in the community college district's best interest. The district representative shall use as guidance in making that determination the organizational conflicts of interest regulations set forth in the Code of Federal Regulations, 48 CFR Chapter 1, Subpart 9.5 (October 1, 1991), excluding later amendments or editions, incorporated by reference herein and on file with the Secretary of State. The determination shall state the specific reasons that the restriction in subsection (B)(1) has been waived.

R7-1-902.04. Procurement of Construction Services

A. Bid security

1. Invitations for Bid on state construction contracts shall require the submission of bid security in an amount equal to bid security in an amount and at the time, pursuant to subsection (A)(3). If a bidder fails to submit the required bid security with the bid, the bid shall be deemed nonresponsive except as provided by subsection (A)(7).
2. Acceptable bid security. Acceptable bid security shall be limited to:
 - a. An annual or one-time surety bond executed solely by a surety company or companies holding a certificate of authority to transact surety business in this state issued by the Director of the Department of Insurance pursuant to A.R.S. Title 20, Chapter 2, Article 1 and in a form as prescribed by the District Governing Board; or
 - b. A certified or cashier check.
3. Bid security shall be submitted in the following amounts:
 - a. For design-bid-build construction services, ten percent of the contractor's bid.
 - b. For design-build construction services awarded by competitive sealed proposals pursuant to subsection (F)(5), ten percent of the community college district or its designee's construction budget for the project as stated in the request for proposals, excluding finance services, maintenance services, operations services or any other related services included in the contract.
 - c. For job-order-contracting construction services awarded by competitive sealed proposals pursuant to subsection (F)(5), the amount prescribed by the community college district or its designee in the request for proposals, but not more than ten percent of the community college district or its designee estimated budget for construction during the first year under the contract, excluding any finance services, maintenance services, operations services or any other related services included in the contract.
4. Nothing in this Section prevents a community college district from requiring such bid security in relation to any construction contract.
5. If the invitation for bids or request for proposals requires security, noncompliance requires that the bid be rejected unless, pursuant to rules, it is determined that the bid fails to comply in a nonsubstantial manner with the security requirements.
6. After the bids or proposals are opened, they are irrevocable for the period specified in the invitation for bids or request for proposals, except as provided in R7-1-902.01(B)(6) and subsection (F)(5) of this Section.
7. Nonsubstantial failure to comply. The district representative may determine that noncompliance is nonsubstantial if:
 - a. Only one bid is received and there is not sufficient time to rebid; or
 - b. The amount of the bid security submitted, although less than the amount required by the Invitation for Bids, is equal to or greater than the difference between the apparent low bid and the next higher acceptable bid; or
 - c. The bid security is inadequate as a result of correcting or modifying a bid in accordance with R7-1-902.02(K), if the bidder increases the amount of security to required limits within two days after notification.

B. Contract performance and payment bonds

1. The following bonds or security is required and is binding on the parties to the contract if the value of a construction award in an amount approved by the district representative:
 - a. A performance bond that is executed and furnished as required under A.R.S. Title 34, Chapter 2, Article 2 or Chapter 6, as applicable, in an amount equal to one hundred percent of the price specified in the contract conditioned on the faithful performance of the contract in accordance with the plans, specifications and conditions of the contract, except that, for job-order-contracting construction services, the performance bond shall cover the full amount of construction under the job-order-contracting construction services contract, shall not include any

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design services, preconstruction services, finance services, maintenance services, operations services or other related services included in the contract, shall initially be based on the community college district or its designee's estimate of the amount of construction that will be done under the contract and, for multiyear contracts, may be a single bond for the full term of the contract or a separate bond for each year of the contract, as determined by the district representative, and except that for construction-manager-at-risk construction services and design-build construction services, the amount of the performance bond shall be the price of construction services, excluding the cost of any design services, preconstruction services, finance services, maintenance services, operations services and other related services included in the contract. The performance bond shall cover performance of construction included in the contract and shall not cover performance of any design services, preconstruction services, finance services, maintenance services, operations services or other related services included in the contract. This bond is solely for the protection of this community college district or its designee. The conditions and provisions of the performance bond regarding the surety's obligations shall follow the form required under A.R.S. § 34-222(G) or A.R.S. § 34-608(G), as applicable.

- b. A payment bond that is executed and furnished as required by A.R.S. Title 34, Chapter 2, Article 2 or Chapter 6, as applicable, in an amount equal to one hundred percent of the price specified in the contract for the protection of all persons supplying labor or material to the contractor or its subcontractors for the performance of the construction provided for in the contract, except that, for job-order-contracting construction services, the payment bond shall cover the full amount of construction under the job-order-contracting construction services contract, shall not include any design services, preconstruction services, finance services, maintenance services, operations services or other related services included in the contract, shall initially be based on the community college district or its designee's estimate of the amount of construction that will be done under the contract and, for multi-year contracts, may be a single bond for the full term of the contract or a separate bond for each year of the contract, as determined by the district representative, and except that, for construction-manager-at-risk construction services and design-build construction services, the amount of the payment bond shall be the price of construction services, excluding the cost of any design services, preconstruction services, finance services, maintenance services, operations services or any other related services included in the contract. The conditions and provisions of the payment bond regarding the surety's obligations shall follow the form required under A.R.S. § 34-222(F) or A.R.S. § 34-608(F), as applicable.
2. For design-bid-build construction, the bonds prescribed in subsections (B)(1) and (C)(2)(a) shall be provided on and at the same time as execution of the contract. For construction-manager-at-risk, design-build and job-order-contracting construction services, the bonds prescribed in (B)(1) shall be provided only on and at the same time as execution of a contract or an amendment to a contract that commits the contractor to provide construction for a fixed price, guaranteed maximum price or other fixed amount within a designated time-frame. For design-build or job-order-contracting construction services, if a person or firm that is not licensed to perform construction pursuant to A.R.S. Title 32, Chapter 10 has a construction services contract with the community college district or its designee and has contracted for the construction portion of the construction services contract with a firm that is licensed to perform construction pursuant to A.R.S. Title 32, Chapter 10:
 - a. The person or firm holding the contract shall provide the payment bond and the performance bond.
 - b. The firm licensed to perform construction is not required to provide the payment bond or the performance bond.
3. If the prime contract or specifications require any persons supplying labor or materials in the prosecution of the work to furnish payment or performance bonds, these bonds shall be executed solely by a surety company or companies holding a certificate of authority to transact surety business in this state issued by the director of the Department of Insurance pursuant to A.R.S. Title 20, Chapter 2, Article 1. Notwithstanding the provisions of any other statute, the bonds shall not be executed by an individual surety or sureties, even if the requirements of A.R.S. § 7-101 are satisfied.

C. Bond form

The district representative shall specify the form of the bonds required by this Article.

D. Contract payment retention; partial payment

1. Ten percent of all construction contract payments shall be retained by the community college district as insurance of proper performance of the contract or, at the option of the contractor, a substitute security may be provided by the contractor in an authorized form pursuant to rules adopted by the District Governing Board. The contractor is entitled to all interest from any such substitute security.
2. When the contract is fifty percent completed, one-half of the amount retained or securities substituted pursuant to this Section shall be paid to the contractor upon the contractor's request provided the contractor is making satisfactory progress on the contract and there is no specific cause or claim requiring a greater amount to be retained. After the contract is fifty percent completed, no more than five percent of the amount of any subsequent progress payments made under the contract shall be retained providing the contractor is making satisfactory progress on the project, except that if at any time the district representative determines satisfactory progress is not being made ten percent retention shall be reinstated for all progress payments made under the contract subsequent to the determination.

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3. Any retention shall be paid or substitute security shall be returned to the contractor within sixty days after final completion and acceptance of work under the contract. Retention of payments by a community college district longer than sixty days after final completion and acceptance requires a specific written finding by the community college of the reasons justifying the delay in payment. No community college district may retain any monies after sixty days which are in excess of the amount necessary to pay the expenses the community college district reasonably expects to incur in order to pay or discharge the expenses determined by the finding justifying the retention of monies.
4. This community college district shall not accept any substitute security unless accompanied by a signed and acknowledged waiver of any right or power of the obligor to set off any claim against either the community college or the contractor in relationship to the security assigned. In any instance in which this community college district accepts substitute security as provided in this Section, any subcontractor undertaking to perform any part of the contract is entitled to provide such security to the contractor.
5. Notwithstanding anything to the contrary in this Section: Retention is not required for job-order-contracting construction services contracts, except that the district representative may elect to require retention for a job-order-contracting construction services contract.
6. If the district representative elects to require retention, subsections (D)(1) through (D)(4) apply to the job-order-contracting construction services contract, except that:
 - a. Retention shall be five percent of each payment instead of ten percent reducing to five percent.
 - b. Retention applicable to each job order shall be released within sixty days after final completion of the job order and acceptance of the work under the job order. No retention on the job order may be released until that time.
 - c. The retention percentage shall not be increased.
7. This Section applies only to amounts payable in a construction services contract for construction and does not apply to amounts payable in a construction services contract for design services, preconstruction services, finance services, maintenance services, operations services or any other related services included in the contract.

E. Progress payments

1. Progress payments may be made by this community college district or its designee to the contractor on the basis of a duly certified and approved estimate of the work performed during a preceding period of time as set by rule, except that a percentage of all payments shall be retained as provided in subsection (D). The progress payments shall be paid on or before fourteen days after the estimate of the work is certified and/or approved by the community college district. An estimate of the work submitted under this Section shall be deemed approved and certified after seven days from the date of submission unless before that time the community college district or its designee prepares and issues a specific written finding detailing those items in the estimate of the work that are not approved and certified under the contract. The community college district may withhold an amount from the progress payment sufficient to pay the expenses the community college district or its designee reasonably expects to incur in correcting the deficiency or paying a claim set forth in the written finding. On completion and acceptance of separate divisions of the contract on which the price is stated separately in the contract, payment may be made in full including retained percentages less deductions, unless a substitute security has been provided pursuant to subsection (D). No contract for construction may materially alter the rights of any contractor; subcontractor or material supplier to receive prompt and timely payment as provided under this Section.
2. The contractor shall pay to his subcontractors or material suppliers and each subcontractor shall pay to his subcontractor or material supplier, within seven days of receipt of each progress payment, unless otherwise agreed in writing by the parties, the respective amounts allowed the contractor or subcontractor on account of the work performed by his subcontractors, to the extent of each such subcontractor's interest therein, except that no contract for construction may materially alter the rights of any contractor, subcontractor or material supplier to receive prompt and timely payment as provided under this Section. These payments to subcontractors or material suppliers shall be based on payments received pursuant to this Section. Any diversion by the contractor or subcontractor of payments received for work performed on a contract, or failure to reasonably account for the application or use of such payments, constitutes grounds for disciplinary action by the registrar of contractors. The subcontractor or material supplier shall notify the registrar of contractors and the district representative in writing of any payment less than the amount or percentage approved for the class or item of work as set forth in this Section.
3. A subcontractor may notify the district representative in writing requesting that the subcontractor be notified by the district representative in writing within five days from payment of each progress payment made to the contractor. The subcontractor's request remains in effect for the duration of the subcontractor's work on the project.
4. Nothing in this Chapter prevents the contractor or subcontractor, at the time of application and certification to the community college district or its designee or contractor, from withholding such application and certification to the community college district or its designee or contractor for payment to the subcontractor or material supplier for unsatisfactory job progress, defective construction work or materials not remedied, disputed work or materials, third party claims filed or reasonable evidence that a claim will be filed, failure of a subcontractor to make timely payments for labor, equipment and materials, damage to the contractor or another subcontractor, reasonable evidence that

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the subcontract cannot be completed for the unpaid balance of the subcontract sum or a reasonable amount for retention that does not exceed the actual percentage retained by the community college district or its designee.

5. If any payment to a contractor is delayed after the date due interest shall be paid at the rate of one percent per month or a fraction of the month on such unpaid balance as may be due.
6. If any periodic or final payment to a subcontractor is delayed by more than seven days after receipt of periodic or final payment by the contractor or subcontractor, the contractor or subcontractor shall pay his subcontractor or material supplier interest, beginning on the eighth day, at the rate of one percent per calendar month or a fraction of a calendar month on such unpaid balance as may be due.

F. Procurement of specified construction services:

1. Construction-manager-at-risk construction services, design-build construction services, job-order-contracting construction services shall be procured as provided in this Section except as authorized by R7-1-902.01(C) and R7-1-902.01(D).
2. The district representative shall provide notice, in accordance with rules, of each procurement of construction services specified in this Section and shall award contracts on the basis of demonstrated competence and qualifications for the type of construction services pursuant to procedures prescribed in this Section.
3. For all construction services, the district representative shall follow the procedure prescribed in this subsection. The district representative shall issue a request for qualifications for each contract and publish notice of the request for qualifications in the same manner as provided in R7-1-902.01(B)(3). The district representative shall initiate an appropriately qualified selection committee for each contract in accordance with rules adopted by the District Governing Board. A contractor is not required to serve on the selection committee if the contract does not include construction. A person who is a member of a selection committee shall not be a contractor under the contract or provide construction, construction services, materials or services under the contract. The selection committee shall:
 - a. Evaluate the statements of qualifications and performance data that are submitted in response to the purchasing agency's request for qualifications or proposal for the proposed contract.
 - b. If determined by the district representative and included by the district representative in the request for qualifications, conduct discussions with at least three persons or firms as specified in the request for qualifications or proposal regarding the contract and the relative methods of approach for furnishing the required professional services or construction services.
 - c. In order of preference, based on criteria established and published by the selection committee and included in the request for qualifications or proposal, select a short list of three of the persons or firms the selection committee deems to be the most qualified to provide the professional services or construction services. If only two responsible and responsive persons or firms respond to the solicitation, the selection committee may proceed with the selection process with those two persons or firms or the selection committee may readvertise pursuant to this subsection as the selection committee deems necessary or appropriate.
 - d. Base the selection of the short list and order of preference on demonstrated competence and qualifications only.
 - e. Not request or consider fees, price, man-hours or any other cost information in the selection of the short list or order of preference.
4. The district representative shall award a contract for professional services or construction services to one of the persons or firms on the short list prepared pursuant to subsection (F)(3) as provided in subsections (F)(6) or (F)(7), except that:
 - a. If only two persons or firms that the selection committee determines are qualified respond to the request for proposals pursuant to subsection (F)(5) or if one of the three persons or firms drops out of the selection process pursuant to subsections (F)(6) or (F)(7), so that only two persons or firms remain on the short list, the purchasing agency, as the purchasing agency deems necessary or appropriate, may elect to proceed with the selection process with the two persons or firms or elect to readvertise pursuant to subsection (F)(3).
 - b. For professional services only, if only one responsive and responsible person or firm responds to the solicitation, the district representative may award the contract to a single person or firm if the purchasing agency determines in writing that the fee negotiated pursuant to subsection (F)(5) is fair and reasonable and either other prospective persons or firms had a reasonable opportunity to respond or there is not adequate time for a resolicitation.
5. The district representative shall enter into negotiations for a contract with the highest qualified person or firm for the professional services or construction services. The negotiations shall include consideration of compensation and other contract terms that the officer determines to be fair and reasonable to this community college district or its designee. In making this decision, the procurement officer shall take into account the estimated value, the scope, the complexity and the nature of the professional services or construction services to be rendered. If the district representative is unable to negotiate a satisfactory contract with the person or firm considered to be the most qualified, at compensation and other contract terms the district representative determines to be fair and reasonable to this community college district or its designee, district representative shall formally terminate negotiations with that person or firm. The district representative may undertake negotiations with the next most qualified person or firm in sequence until an agreement is reached or a determination is made to reject all persons or firms on the short list. If a contract for con-

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- struction services is entered into pursuant to this subsection, construction shall not commence until the district representative and contractor agree in writing on a fixed price or a guaranteed maximum price for the construction to be commenced.
6. As an alternative to subsection (F)(4), the district representative may award design-build construction services or job-order-contracting construction services as follows:
 - a. The district representative shall use the selection committee appointed for the contract pursuant to subsection (F)(3).
 - b. The district representative shall issue a request for proposals to the persons or firms on the short list developed pursuant to subsection (F)(3).
 7. For design-build construction services and job-order-contracting construction services, the request for proposals shall include:
 - a. The purchasing agency's project schedule and project final design and construction budget or life cycle budget for a procurement that includes maintenance services or operations services.
 - b. For design-build construction services only, the design requirements.
 - c. A requirement that each offeror submit separately a technical proposal and a price proposal and that the offeror's entire proposal is responsive to the requirements in the request for proposals. For design-build construction services, the price in the price proposal shall be a fixed price or a guaranteed maximum price.
 - d. A statement that the contract will be awarded to the person or firm whose proposal receives the highest number of points under a scoring method.
 - e. A statement that in applying the scoring method the selection committee will separately evaluate the technical proposal and the price proposal and will evaluate and score the technical proposal before opening the price proposal.
 - f. If the purchasing agency conducts discussions pursuant to subsection (F)(7), a statement that discussions will be held and a requirement that each offeror submit a preliminary technical proposal before the discussions are held.
 - g. A description of the scoring method, including a list of the factors in the scoring method and the number of points allocated to each factor.
 8. The factors in the scoring method shall include:
 - a. For design-build construction services only, demonstrated compliance with the design requirements.
 - b. Offeror qualifications.
 - c. Offeror financial capacity.
 - d. Compliance with the purchasing agency's project schedule.
 - e. For design-build construction services only, if the request for proposals specifies that the purchasing agency will spend its project budget and not more than its project budget and is seeking the best proposal for the project budget, compliance of the offeror's price or life cycle price for procurements that include maintenance services, operations services or finance services with the purchasing agency's budget as prescribed in the request for proposals.
 - f. For design-build construction services if the request for proposals does not contain the specifications prescribed in subsection (F)(21) and for job-order-contracting construction services, the price or life cycle price for procurements that include maintenance services, operations services or finance services.
 - g. An offeror quality management plan.
 - h. Other evaluation factors as determined by the purchasing agency, if any.
 9. If the purchasing agency determines to conduct discussions pursuant to subsection (F)(10), each offeror shall submit a preliminary technical proposal to the purchasing agency before those discussions are held.
 10. If determined by the purchasing agency and included by the purchasing agency in the request for proposals, the selection committee shall conduct discussions with all persons or firms that submit preliminary technical proposals. Discussions shall be for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair treatment with respect to any opportunity for discussion and for clarification by the district representative. Revision of preliminary technical proposals shall be permitted after submission of preliminary technical proposals and before award for the purpose of obtaining best and final proposals. In conducting any discussions, information derived from proposals submitted by competing offerors shall not be disclosed to other competing offerors.
 11. After completion of any discussions pursuant to subsection (F)(10) or if no discussions are held, each offeror shall submit separately its final technical proposal and its price proposal.
 12. Before opening any price proposal, the selection committee shall open the final technical proposals, evaluate the final technical proposals and score the final technical proposals using the scoring method in the request for proposals. No other factors or criteria may be used in the evaluation and scoring.
 13. After completion of the evaluation and scoring of all final technical proposals, the selection committee shall open the price proposals, evaluate the price proposals, score the price proposals and complete the scoring of the entire propos-

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- als using the scoring method in the request for proposals. No other factors or criteria may be used in the evaluation and scoring.
14. The procurement officer shall award the contract to the responsive and responsible offeror whose proposal receives the highest score under the method of scoring in the request for proposals. No other factors or criteria may be used in the evaluation.
 15. The contract file shall contain the basis on which the award is made.
 16. For design-build construction services only, the district representative shall award a stipulated fee equal to a percentage, as prescribed in the request for proposals, of the community college district or its designee's project final design and construction budget, as prescribed in the request for proposals, but not less than two-tenths of one percent of the project final design and construction budget to each short list offeror who provides a responsive, but unsuccessful, proposal. If the district representative does not award a contract, all responsive short list offerors shall receive the stipulated fee based on the community college district or its designee's estimate of the project final design and construction budget as included in the request for proposals. The district representative shall pay the stipulated fee to each offeror within ninety days after the award of the initial contract or the decision not to award a contract. In consideration for paying the stipulated fee, the district representative may use any ideas or information contained in the proposals in connection with any contract awarded for the project, or in connection with a subsequent procurement, without any obligation to pay any additional compensation to the unsuccessful offerors. Notwithstanding the other provisions of this subsection, an unsuccessful short list offeror may elect to waive the stipulated fee. If an unsuccessful short list offeror elects to waive the stipulated fee, the community college district or its designee may not use ideas and information contained in the offeror's proposal, except that this restriction does not prevent the community college district or its designee from using any idea or information if the idea or information is also included in a proposal of an offeror that accepts the stipulated fee.
 17. Until award and execution of a contract by a community college district or its designee, only the name of each person or firm on the short list developed pursuant to subsection (F)(3) may be made available to the public. All other information received by the community college district or its designee and district representative in response to the request for qualifications or contained in the proposals shall be confidential in order to avoid disclosure of the contents that may be prejudicial to competing offerors during the selection process. The proposals shall be open to public inspection after the contract is awarded and the district representative has executed the contract. To the extent that the offeror designates and the community college district or its designee and district representative concurs, trade secrets and other proprietary data contained in a proposal remain confidential.
 18. A district representative may cancel a request for qualifications or a request for proposals or reject in whole or in part any or all submissions of qualifications or proposals as specified in the solicitation if it is in the best interest of the community college district. The district representative shall make the reasons for cancellation or rejection part of the contract file.
 19. Notwithstanding any other law:
 - a. The contractor for construction-manager-at-risk, design-build or job-order-contracting construction services is not required to be registered to perform design services pursuant to A.R.S. Title 32, Chapter 1 if the person or firm actually performing the design services on behalf of the contractor is appropriately registered.
 - b. The contractor for construction-manager-at-risk, design-build or job-order-contracting construction services is not required to be licensed to perform construction pursuant to A.R.S. Title 32, Chapter 10 if the firm actually performing the construction on behalf of the contractor is appropriately licensed.
 - c. Each project under a design-build construction services contract or a construction-manager-at-risk construction services contract shall be a specific, single project. For the purposes of this subsection, "specific, single project" means a project that is constructed at a single location, at a common location or for a common purpose.
 20. For job-order-contracting construction services only:
 - a. The dollar amount of an individual job order shall not be more than the amount set by the district representative as the maximum amount of an individual job order. This maximum amount shall not be more than seven hundred fifty thousand dollars. Requirements shall not be artificially divided or fragmented in order to constitute a job order that satisfies this requirement.
 - b. The contractor subcontracts or intends to subcontract part or all of the work under a job order and if the job-order construction services contract includes descriptions of standard individual tasks, standard unit prices for standard individual tasks and pricing of job orders based on the number of units of standard individual tasks in the job order as outlined in this subsection.
 - c. The contractor has a duty to deliver promptly to each subcontractor invited to bid a coefficient to the contractor to do all or part of the work under one or more job orders: a copy of the descriptions of all standard individual tasks on which the subcontractor is invited to bid, and a copy of the standard unit prices for the individual tasks on which the subcontractor is invited to bid.
 - d. If not previously delivered to the subcontractor, the contractor has a duty to deliver promptly the following to each subcontractor invited to or that has agreed to do any of the work included in any job order: a copy of the

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description of each standard individual task that is included in the job order and that the subcontractor is invited to perform, the number of units of each standard individual task that is included in the job order and that the subcontractor is invited to perform, and the standard unit price for each standard individual task that is included in the job order and that the subcontractor is invited to perform.

21. Notwithstanding anything to the contrary in this rule, a community college district or its designee shall not:
 - a. Enter into a contract as contractor to provide construction-manager-at-risk construction services, design-build construction services or job-order-contracting construction services.
 - b. Contract with itself, with another community college district or its designee with this state or with any other governmental unit of this state or the federal government for the purchasing agency to provide construction-manager-at-risk construction services, design-build construction services or job-order-contracting construction services.
22. The prohibitions prescribed in subsection (F)(21) do not prohibit a community college district or its designee from providing construction for itself as provided by law.

G. Project delivery methods for design and construction services:

1. A community college district or its designee may procure design services, construction and construction services, as applicable, under any of the following project delivery methods:
 - a. Design-bid-build.
 - b. Construction-manager-at-risk.
 - c. Design-build.
 - d. Job-order-contracting.
2. For the design-bid-build project delivery method, the district representative shall procure:
 - a. Design services pursuant to subsection (F).
 - b. Construction by competitive sealed bidding, except as otherwise provided in R7-1-902.01(A).
3. The district representative shall procure construction services under the construction-manager-at-risk, design-build and job-order-contracting project delivery methods pursuant to subsection (F).
4. The district representative shall procure design services relating to a construction-manager-at-risk construction services project pursuant to subsection (F).
5. For job-order-contracting construction services projects, if the district representative does not include design services in the job-order-contracting construction services contract, the district representative shall procure any design services relating to job-order-contracting construction services projects under the contract pursuant to subsection (F).
6. On or before December 15 of each year, any community college district that uses construction-manager-at-risk, design-build or job-order-contracting to procure construction services in a calendar year shall transmit to the State Board a report on the total benefits associated with the use of construction-manager-at-risk, design-build or job-order-contracting to procure construction services. The report shall include the number of projects completed in the preceding calendar year using the procurement methods, the cost and description of each project, an estimate of any cost savings or other benefits realized through the use of the procurement method.

H. Construction contracts: void provisions

A provision, covenant, clause or understanding in, collateral to or affecting a construction contract that makes the contract subject to the laws of another state or that requires any litigation, arbitration or other dispute resolution proceeding arising from the contract to be conducted in another state is against this state's public policy and is void and unenforceable.

R7-1-902.05. Procurement of Construction Services Administrative

A. The Form of Substitute Security

The form of security that may substitute for contract payment retention is limited to the following:

1. An assignment of time certificates of deposit by financial institutions licensed by this state;
2. Share certificate of a saving and loan institution or credit union authorized to transact business in this state; or
3. Security issued or guaranteed as to principal and interest by:
 - a. The United States;
 - b. The state;
 - c. Counties, municipalities and school districts within this state.

B. Conditions for Use of Substitute Security

1. A contractor may submit substitute security to replace contract payment retention if:
 - a. The substitute security is submitted prior to each progress payment in an amount of no less than 10% of each progress payment or once in an amount no less than 10% of the total contract amount, except for provisions in R7-1-902.04(D)(6);
 - b. The interest earned on such security shall accrue to the benefit of the contractor but shall be retained until the district representative has approved completion and acceptance of all work to be performed under the contract;
 - c. The term of such security shall not mature until after the estimated contract completion date;
 - d. The security shall mature no later than one year after the estimated contract completion date; and

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- e. The substitute security shall not be released without written approval by the district representative.
- 2. A contractor may submit a single substitute security for more than one project provided that:
 - a. The amount of such security is no less than 10% of the aggregate amount of all contracts or all progress payments;
 - b. The district representative determines that such single substitute security is advantageous to the state; and
 - c. Such security complies with the requirements of R7-1-902.05(B)(1).

C. Cancellation or Rejection of the Solicitation

The solicitation may be cancelled or proposals rejected in accordance with R7-1-902.01(E).

D. Single Negotiated Fee Method of Award

- 1. The district representative shall negotiate a contract with the most qualified firm for the required services at compensation determined in writing to be fair and reasonable to the state. Contract negotiations shall be directed toward:
 - a. Making certain that the firm has a clear understanding of the scope of the work, specifically, the essential requirements involved in providing the required services;
 - b. Determining that the firm will make available the necessary personnel and facilities to perform the services within the required time; and
 - c. Agreeing upon compensation that is fair and reasonable, taking into account the estimated value, scope, complexity, and nature of the required services.
- 2. The firm selected for award shall submit and certify cost and pricing data.
- 3. Failure to negotiate with the most qualified firm
 - a. If fair and reasonable compensation, contract requirements, and contract documents cannot be agreed upon with the most qualified firm, the district representative shall advise the firm in writing of the termination of negotiations.
 - b. The district representative shall negotiate with the next most qualified firm in sequence or cancel the solicitation.
- 4. Written notice of the award shall be sent to the firm with whom the contract is successfully negotiated. Each firm with whom discussions were held shall be notified of the award. Notice of award shall be made available to the public.
- 5. After award of the contract, a memorandum setting forth the principal elements of the negotiation shall be prepared by the district representative. Such memorandum shall contain sufficient detail to reflect the significant considerations controlling price and the other terms of the contract. Such memorandum shall be included in the procurement file and be available to the public upon request.

R7-1-902.06. Legal and Contractual Remedies

A. Definitions and General.

In this Article, unless the context otherwise requires:

- 1. "Affiliate" means any person whose governing instruments require it to be bound by the decision of another person or whose governing board includes enough voting representatives of the other person to cause or prevent action, whether or not the power is exercised. It may also include persons doing business under a variety of names, or where there is a parent-subsidary relationship between persons.
- 2. "Debarment" means an action taken by the Director of the Department of Administration under R2-7-925 to prohibit a person from participating in state procurements.
- 3. "Filed" means delivery to the District Governing Board. A time/date stamp affixed to a document by the office of the District Governing Board shall be determinative of the time of delivery for purposes of filing.
- 4. "Governing instruments" means those legal documents that establish the existence of an organization and define its powers including articles of incorporation or association, constitution, charter and by-laws.
- 5. "Interested party" means an actual or prospective bidder or offeror whose economic interest may be affected substantially and directly by the issuance of a solicitation, the award of a contract or by the failure to award a contract. Whether an actual or prospective bidder or offeror has an economic interest will depend upon the circumstances of each case.
- 6. "Suspension" means an action taken by the Director of the Department of Administration under R2-7-930 temporarily disqualifying a person from participating in state procurements.

B. Bid Protests

1. Resolution of Bid Protests

- a. Informal resolution of bid protests. Nothing in this Section is intended to eliminate the informal resolution of problems by community college district personnel.
- b. Formal resolution of bid protests. The District Governing Board shall designate a community college district representative to resolve bid protests. Appeal from the decision of the district representative may be made to the hearing officer.

2. Filing of a Protest

- a. Any interested party may protest a solicitation issued by the state, or the proposed award or the award of a state contract.

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- b. Content of protest. The protest shall be in writing and shall include the following information:
 - i. The name, address and telephone number of the protester;
 - ii. The signature of the protester or its representative;
 - iii. Identification of the purchasing agency and the solicitation or contract number;
 - iv. A detailed statement of the legal and factual grounds of the protest including copies of relevant documents;
and
 - v. The form of relief requested.
- 3. Time for Filing Protests
 - a. Protests concerning improprieties in a solicitation
 - i. Protests based upon alleged improprieties in a solicitation that are apparent before the bid opening shall be filed before bid opening. Protests based upon alleged improprieties in a solicitation that are apparent before the closing date for receipt of initial proposals shall be filed before the closing date for receipt of initial proposals.
 - ii. In procurements requesting proposals, protests concerning improprieties that do not exist in the initial solicitation but that are subsequently incorporated into the solicitation shall be filed by the next closing date for receipt of proposals following the incorporation.
 - b. In cases other than those covered in subsection (B)(3)(i) of this rule, protests shall be filed within ten days after the protester knows or should have known the basis of the protest, whichever is earlier.
 - c. The protester shall give notice of the protest to district representative within a reasonable time.
 - d. If the protester shows good cause, the district representative may consider any protest that is not filed timely.
 - e. The district representative shall immediately give notice of the protest to all interested parties.
- 4. Stay of Procurements During the Protest

If a protest is filed before the award of a contract or before performance of a contract has begun, the award may be made or contract performance may proceed, unless the district representative stays the contract award or performance on determining in writing that there is a reasonable probability that the protest will be sustained or that stay is not contrary to the best interests of the state.
- 5. Confidential Information
 - a. Material submitted by a protester shall not be withheld from any interested party except to the extent that the withholding of information is permitted or required by law as determined pursuant to R7-1-902.01(B).
 - b. If the protester believes the protest contains material that should be withheld, a statement advising the District Governing Board of this fact shall accompany the protest submission in accordance with R7-1-902.01(B).
- 6. Decision by the District Representative
 - a. The district representative shall issue a written decision within 14 days after protest has been filed pursuant to subsection (B)(2). The decision shall contain an explanation of the basis of the decision and a statement that the decision may be appealed to the District Governing Board within five days from receipt of the decision.
 - b. The district representative shall furnish a copy of the decision to the protester, by certified mail, return receipt requested, or by any other method that provides evidence of receipt.
 - c. The time limit for decisions set forth in subsection (B)(6)(a) of this rule may be extended by the District Governing Board or its designee for good cause for a reasonable time not to exceed 30 days. The District Governing Board or its designee shall notify the protester in writing that the time for the issuance of a decision has been extended and the date by which a decision will be issued.
 - d. If the district representative fails to issue a decision within the time limits set forth in subsections (B)(6)(a) or (B)(6)(c), the protester may proceed as if the district representative had issued an adverse decision.
- 7. Remedies
 - a. If the district representative sustains the protest in whole or part and determines that a solicitation, proposed contract award, or contract award does not comply with the procurement statutes and regulations, the district representative shall implement an appropriate remedy.
 - b. In determining an appropriate remedy, the district representative shall consider all the circumstances surrounding the procurement or proposed procurement including, but not limited to, the seriousness of the procurement deficiency, the degree of prejudice to other interested parties or to the integrity of the procurement system, the good faith of the parties, the extent of performance, costs to the community college district, the urgency of the procurement, and the impact of the relief on the purchasing agency's mission.
 - c. An appropriate remedy may include one or more of the following:
 - i. Decline to exercise an option to renew under the contract;
 - ii. Terminate the contract;
 - iii. Amend the solicitation;
 - iv. Issue a new solicitation;
 - v. Award a contract consistent with procurement statutes and regulations; or
 - vi. Such other relief as is determined necessary to ensure compliance with procurement statutes and regulations.

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8. Appeals to the District Governing Board

- a. An appeal from a decision entered or deemed to be entered by district representative shall be filed with the Director within five days after the date the decision is received. The appellant shall also file a copy of the appeal with the district representative.
- b. Content of appeal. The appeal shall contain:
 - i. The information set forth in subsection (B)(2) including the identification of protected information in the manner set forth in subsection (B)(5);
 - ii. A copy of the decision of the district representative; and
 - iii. The precise factual or legal error in the decision of the district representative from which an appeal is taken.

9. Notice of Appeal

- a. The district representative shall immediately give notice of the appeal to interested parties.
- b. The District Governing Board shall upon request furnish copies of the appeal to those named in subsection (B)(9)(a) of this rule subject to the provisions of subsection (B)(5).

10. Stay of Procurement During Appeal

If a stay was issued pursuant to (B)(4), the filing of an appeal shall automatically continue the stay unless the District Governing Board makes a written determination that the award of the contract without delay is necessary to protect substantial interests of the state.

11. Agency Report

- a. The district representative shall file a complete report on the appeal with the District Governing Board within ten days after the date the appeal is filed. At the same time, the district representative shall furnish a copy of the report to the appellant by certified mail, return receipt requested, and to any interested parties who have responded to the notice given pursuant to subsection (B)(9)(b). The report shall contain copies of:
 - i. The appeal;
 - ii. The bid or proposal submitted by the appellant;
 - iii. The bid or proposal of the firm that is being considered for award;
 - iv. The solicitation, including the specifications or portions relevant to the appeal;
 - v. The abstract of bids or proposals or relevant portions;
 - vi. Any other documents that are relevant to the protest; and
 - vii. A statement by the district representative setting forth findings, actions, recommendations and any additional evidence or information necessary to determine the validity of the appeal.
- b. Extension for filing of report
 - i. The district representative may request in writing an extension of the time period setting forth the reason for extension.
 - ii. The District Governing Board's determination on the request shall be in writing, state the reasons for the determination, and, if an extension is granted, set forth a new date for the submission of the report. The District Governing Board shall notify the district representative and the appellant in writing that the time for the submission of the report has been extended and the date by which the report will be submitted.
- c. Comments on report
 - i. The appellant shall file comments on the agency report with the Director within seven days after receipt of the report. The appellant shall provide copies of the comments to the District Governing Board of the purchasing agency and other interested parties.
 - ii. The District Governing Board may grant an extension on the time period to file comments pursuant to a written request made by the appellant within the period set forth in subsection (B)(11)(c)(i) stating the reason an extension is necessary. The District Governing Board's determination on the request shall be in writing, state the reasons for the determination, and, if the extension is granted, set forth a new date for the filing of comments. The District Governing Board shall notify the district representative of any extension.

12. Dismissal Before Hearing. The District Governing Board shall dismiss, upon a written determination, an appeal before scheduling a hearing if:

- a. The appeal does not state a valid basis for protest; or
- b. The appeal is untimely pursuant to subsection (B)(8)(a).

13. Hearing

Hearings on appeals of bid protest decisions shall be conducted as contested cases pursuant to these rules and the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6, Article 1).

14. Remedies

If the District Governing Board sustains the appeal in whole or part and determines that a solicitation, proposed award, or award does not comply with procurement statutes and regulations, remedies shall be implemented pursuant to subsection (B)(7).

C. Contract Claims

1. Contract Claims

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- a. Claims under contracts shall be filed with the district representative administering the contract within 30 days after claim arises.
 - b. The district representative administering the contract shall have the authority to settle and resolve contract claims subject to subsection (C)(1)(c). Appeals from decisions of the district representative may be made to the District Governing Board pursuant to subsection (C)(4).
 - c. The settlement or resolution of a claim in and amount determined by the District Governing Board requires the prior written approval of the District Governing Board.
2. District Representative's Decision
 - a. If a claim cannot be resolved by mutual agreement, the district representative shall, upon a written request by the contractor for a final decision, issue a written decision no more than 60 days after the request is filed. Before issuing a final decision, the district representative shall review the facts pertinent to the claim and secure any necessary assistance from legal, fiscal, and other advisors.
 - b. Final decision. The district representative shall furnish a copy of the decision to the contractor, by certified mail, return receipt requested, or by any other method that provides evidence of receipt. The decision shall include:
 - i. A description of the claim;
 - ii. A reference to the pertinent contract provision;
 - iii. A statement of the factual areas of agreement or disagreement;
 - iv. A statement of the procurement officer's decision, with supporting rationale;
 - v. A paragraph substantially as follows: "This is the final decision of the district representative. This decision may be appealed to the District Governing Board. If you appeal, you must file a written notice of appeal with the District Governing Board within five days from the date you receive this decision".
3. Issuance of a Timely Decision
 - a. The time limit for decisions set forth in subsection (C)(2)(a) may be extended for good cause for a reasonable time not to exceed 30 days. The district representative shall notify the contractor in writing that the time for the issuance of a decision has been extended and the date by which a decision shall be issued.
 - b. If the district representative fails to issue a decision within 60 days after the request is filed or within the time prescribed under subsection (C)(3)(a), the contractor may proceed as if the district representative had issued an adverse decision.
4. Appeals and Reports to the District Governing Board
 - a. An appeal from a final decision of a district representative on a claim shall be filed with the Director within five days from the date the decision is received. The appellant shall also file a copy of the appeal with the district representative.
 - b. Content of appeal. The appeal shall contain a copy of the decision of the district representative and the precise factual or legal error in the decision of the district representative from which an appeal is taken.
 - c. The district representative shall file a complete report on the appeal with the District Governing Board within ten days from the date the appeal is filed. At the same time, the district representative shall furnish a copy of the report to the appellant by certified mail, return receipt requested. The report at a minimum shall contain a copy of the claim, a copy of the district representative decision, if applicable, and any other documents that are relevant to the claim.
5. Controversies Involving State Claims Against a Contractor

All claims asserted by the community college district against a contractor that are not resolved by mutual agreement shall promptly be referred by the district representative to the District Governing Board for a hearing without regard to the procedures set forth in subsections (C)(1) through (C)(4).
6. Hearing

Hearings on appeals of claims decisions shall be conducted as contested cases pursuant to these rules and the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6, Article 1).
7. Hearing Procedures
 - a. If a hearing is required or permitted under these rules, the District Governing Board shall appoint a hearing officer. The District Governing Board may also direct the parties to engage in settlement negotiations or alternative disputes resolution procedures before scheduling a hearing.
 - b. If a hearing is required or permitted under these rules, the hearing officer shall arrange for a prompt hearing and notify the parties in writing of the time and place of the hearing.
 - c. The hearing shall be conducted in an informal manner without formal rules of evidence or procedure.
 - d. The hearing officer may:
 - i. Hold pre-hearing conferences to settle, simplify, or identify the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding;
 - ii. Require parties to state their positions concerning the various issues in the proceeding;
 - iii. Require parties to produce for examination those relevant witnesses and documents under their control;
 - iv. Rule on motions and other procedural items on matters pending before such officer;

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- v. Regulate the course of the hearing and conduct of participants;
 - vi. Establish time limits for submission of motions or memoranda;
 - vii. Impose appropriate sanctions against any person failing to obey an order under these procedures, which may include: refusing to allow the person to assert or oppose designated claims or defenses, or prohibiting that person from introducing designated matters in evidence; or excluding all testimony of an unresponsive or evasive witness; and expelling the person from further participation in the hearing;
 - viii. Take official notice of any material fact not appearing in evidence in the record, if the fact is among the traditional matters of judicial notice; and
 - ix. Administer oaths or affirmations; and
 - x. Issue a stay of contract award or contract performance.
 - e. A transcribed record of the hearing shall be made available at cost to the requesting party.
 - 8. Recommendation by the Hearing Officer
 - a. The hearing officer shall make a recommendation to the District Governing Board based on the evidence presented. The recommendation shall include findings of fact and conclusions of law.
 - b. The District Governing Board may affirm, modify, or reject the hearing officer's recommendation in whole or in part, may remand the matter to the hearing officer with instructions, or make any other appropriate disposition.
 - 9. Final Decision by the District Governing Board

A decision by the District Governing Board shall be final. The decision shall be sent within 20 days after the conclusion of the hearing to all parties by personal service or certified mail, return receipt requested. The decision shall state that any party adversely affected may within ten days request a rehearing with the District Governing Board.
 - 10. Rehearing of District Governing Board's Decision
 - a. Any party, including a district representative, who is aggrieved by the District Governing Board's decision, may file a written request for rehearing of the decision specifying the particular grounds.
 - i. The request for rehearing shall be filed with the District Governing Board within ten days after receipt of the decision and shall include any supporting affidavits.
 - ii. The request shall be clearly designated as a "Request for Rehearing".
 - iii. The District Governing Board shall within five days after the request is filed notify interested parties of the request by personal service or certified mail, return receipt requested.
 - b. An interested party may within ten days after receipt of the notice file a response including opposing affidavits.
 - c. Any argument not raised in the request or in a response is waived.
 - d. The District Governing Board may require the filing of written briefs and may provide for oral argument.
 - e. A rehearing of the decision may be granted for any of the following causes:
 - i. Irregularity in the proceedings before the District Governing Board or an abuse of discretion by the District Governing Board, depriving the requesting party of a fair hearing;
 - ii. Misconduct of the District Governing Board, his staff or the hearing officer or any party;
 - iii. Accident or surprise that could not have been prevented by ordinary prudence;
 - iv. Newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the original hearing;
 - v. Excessive or insufficient penalties;
 - vi. Error in the admission or rejection of evidence or other error of law occurring at the hearing;
 - vii. A showing that the decision is not justified by the evidence or is contrary to law.
 - f. The District Governing Board decision concerning a request for rehearing shall be in writing and shall state the basis of the decision. A decision granting a rehearing shall specify with particularity the grounds on which the rehearing is granted, and the date, time and place of the rehearing. The rehearing shall cover only those matters specified in the decision.
 - g. The District Governing Board, within the time for filing a request for rehearing under this rule, may on their own initiative order a rehearing of their decision for any reason for which they might have granted a rehearing on request of a party.

NOTICE OF PROPOSED RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

PREAMBLE

- | | |
|------------------------------------|---------------------------------|
| <u>1. Sections Affected</u> | <u>Rulemaking Action</u> |
| R12-15-705 | Amend |
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statutes: Laws 2000, Ch. 391, A.R.S. § 45-105(B)(1), A.R.S. § 45-576(H)

Implementing statute: A.R.S. § 45-576
- 3. List of all previous notices appearing in the Register addressing the proposed rule:**

Notice of Proposed Rulemaking: 7 A.A.R. 5426, December 7, 2001

Notice of Rulemaking Docket Opening: 7 A.A.R. 3052, July 13, 2001
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name:	Charles L. Cahoy, Deputy Counsel Legal Division
Address:	Arizona Department of Water Resources 500 N. 3rd St. Phoenix, AZ 85004
Telephone:	(602) 417-2420
Fax:	(602) 417-2415
- 5. An explanation of the rule, including the agency's reasons for initiating the rule:**

This proposed amendment of R12-15-705 incorporates changes mandated by Laws 2000, Ch. 391 (partially codified as A.R.S. § 45-472.01). Laws 2000, Ch. 391 mandates that the Department amend its rules to implement the requirements of A.R.S. § 45-472.01; those requirements are contained in the proposed R12-15-705.

Arizona's Groundwater Code (A.R.S. §§ 45-401 et seq.) delineates areas of Arizona that have experienced significant groundwater depletion, called active management areas (AMAs). The state's five AMAs incorporate Arizona's most populated areas and include areas within Maricopa, Pima, Pinal, Santa Cruz, and Yavapai Counties. Pursuant to A.R.S. § 45-562, each AMA is assigned a management goal. The Director of the Department of Water Resources is charged with the responsibility of developing and overseeing management plans and other programs designed to achieve reductions in withdrawals of groundwater and therefore help reach the management goals of the AMAs.

The Prescott Active Management Area, encompassing 485 square miles in Yavapai County in central Arizona, includes the Little Chino and upper Agua Fria sub-basins. It has a management goal of safe-yield by January 1, 2025, or an earlier date as determined by the Director. The goal of safe-yield means a long-term balance between groundwater withdrawals or losses and replacement of groundwater within an active management area.

The Groundwater Code also established the Assured Water Supply Program as a tool to allow for continued municipal growth in Arizona while also achieving and maintaining the management goal of safe-yield. Pursuant to A.R.S. § 45-576(I), "assured water supply" means that: (1) sufficient water of adequate quality will be available to meet the water needs of the proposed use for at least 100 years, (2) the projected groundwater use by the development is consistent with the management plan and achievement of the management goal for the active management area in which the development is located and (3) financial capability has been demonstrated to construct the water facilities necessary to make the supply of water available for the proposed use. The program requires all persons proposing to offer subdivided lands for sale or lease within an active management area to demonstrate to the Department that an "assured water supply" exists for the proposed subdivision. The Department approves an Assured Water Supply application for a new subdivision only if the projected water use for that subdivision will not interfere with the "long-term balance" of the amount of groundwater stored in the AMA.

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There are two methods by which a person who proposes to offer subdivided lands may demonstrate that a proposed subdivision has an assured water supply. A subdivider may apply for and obtain a certificate of assured water supply from the Department for a particular proposed subdivision. Or, the subdivider may obtain a written commitment of water service for the proposed subdivision from a city, town, or private water company that the Director has designated as having an assured water supply. A designated provider is one that has demonstrated to the Department that adequate supplies exist to serve, for 100 years, at least its current demand, its committed demand (the estimated demand of all recorded lots within the boundaries of the area which are not yet served), and a minimum of two years of projected demand.

In February 1995, the Department adopted rules implementing the Assured Water Supply Program. Those rules, found at A.A.C. R12-15-701 et seq., provide specific requirements for an applicant for a certificate or designation of assured water supply, including proving that water supplies are physically, continuously and legally available for at least 100 years. The rules also establish the amounts of groundwater that can be used to establish an assured water supply consistent with achievement of the management goal. Accordingly, the rules mandate that new subdivisions built within active management areas use primarily renewable water supplies, such as surface water.

The proposed rule amendment is mandated by Laws 2000, Ch. 391, partially codified at A.R.S. § 45-472.01. The session law requires the Department to amend its Assured Water Supply Rules to implement the requirements of A.R.S. § 45-472.01. This statute addresses extinguishment of grandfathered rights in the Prescott AMA. A grandfathered right is a statutory right to withdraw and use groundwater based on the fact of lawful withdrawals and use of groundwater prior to the establishment of an active management area. Under the Assured Water Supply Rules, the owners of grandfathered groundwater rights may extinguish the rights in exchange for assured water supply credits that a designation or certificate applicant may apply toward its assured water supply determination. In other words, the groundwater allowed to be pumped under the irrigation right may be exchanged for a water provider's right to pump groundwater under an assured water supply determination.

R12-15-705(M) addresses the amount of assured water supply credits established for extinguishing a grandfathered right. The new subsection (M)(7) of the proposed rule incorporates the statutory requirements as directed by the Legislature. It changes the calculation for certain grandfathered rights in the Prescott AMA, giving three different calculations depending upon when the right is extinguished and how many years the irrigation acres associated with the extinguished right were irrigated in calendar years 1994 through 1999.

R12-15-705(L) addresses requirements for extinguishing grandfathered groundwater rights in exchange for assured water supply credits, including return of the certificate evidencing the grandfathered right and submission of a notarized statement of intent to extinguish the right. The proposed subsection (L)(4) incorporates additional conditions of the 2000 session law for extinguishment of the grandfathered rights located in the Prescott AMA.

6. A reference to any study that the agency relied on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:

None

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

8. The preliminary summary of the economic, small business, and consumer impact:

The proposed rule implements what is already state law, reflected in Laws 2000, Ch. 391 and A.R.S. § 45-472.01. The Department is not proposing any action in this rulemaking beyond what the Legislature has required.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name:	Charles L. Cahoy, Deputy Counsel Legal Division
Address:	Arizona Department of Water Resources 500 N. 3rd St. Phoenix, AZ 85004
Telephone:	(602) 417-2420
Fax:	(602) 417-2415

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10. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Persons may submit written comments during business hours to the persons identified in item #9 above until the close of record.

If the Department receives a written request for an oral proceeding on the rulemaking by 5:00 p.m. on June 24, 2002, an oral proceeding will be held at 1:00 p.m. on June 28, 2002, at the Arizona Department of Water Resources, Prescott Active Management Area, 2200 East Hillsdale Road, Prescott, Arizona. The written request must be sent to Charles L. Cahoy, Deputy Counsel, Arizona Department of Water Resources, 500 N. 3rd St., Phoenix, AZ 85004. If no written request is received by 5:00 p.m. on June 24, 2002, no oral proceeding will be held. Please contact Rose Mae Nokes, the Docket Supervisor, at (602) 417-2420 or via the internet at rmnokes@adwr.state.az.us, for information on whether or not a hearing will be held. In accordance with the Americans with Disabilities Act, persons with a disability may request a reasonable accommodation by contacting the Arizona Department of Water Resources office at (602) 417-2420.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

12. Incorporations by reference and their location in the rule:

None

13. The full text of the rule follows:

TITLE 12. NATURAL RESOURCES

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

ARTICLE 7. ASSURED AND ADEQUATE WATER SUPPLY

Section

R12-15-705. Assured Water Supply Requirement - Consistency with Management Goal

ARTICLE 7. ASSURED AND ADEQUATE WATER SUPPLY

R12-15-705. Assured Water Supply Requirement - Consistency with Management Goal

- A. The Director ~~director~~ shall approve an application for a certificate of assured water supply or a designation of assured water supply only if the applicant submits information from which the Director ~~director~~ determines that the proposed groundwater use will be consistent with the achievement of the management goal of the active management area.
- B. In the Prescott Active Management Area, the proposed use of an applicant for a certificate of assured water supply or a designation of assured water supply is consistent with the achievement of the management goal of the active management area, regardless of the volume of groundwater withdrawn from within the active management area for the proposed use, until the Director ~~director~~ enters a final decision and order determining that the Prescott Active Management Area is no longer at safe-yield under the provisions of this Article.
- C. The Director ~~director~~ shall determine whether the Prescott Active Management Area continues to be at safe-yield by analyzing a minimum of three annual data reports containing information on:
1. Groundwater levels,
 2. Changes in groundwater levels,
 3. Pumpage volumes from confined and unconfined aquifers,
 4. Long-term precipitation records,
 5. Surface water flow records,
 6. A comparative evaluation of groundwater conditions as related to climatic normal conditions.
- D. When the reports from three successive annual data reports using normalized information, including committed demand and demands associated with the groundwater allocation for designated entities for calendar year 1995, made in accordance with subsection (F)(2), show ongoing water level declines and increased pumpage, the Director ~~director~~ shall make a preliminary determination that the Prescott Active Management Area is no longer at safe-yield.
- E. ~~Before~~ Prior to entering a final decision and order that the Prescott Active Management Area is no longer at safe yield, the Director ~~director~~ shall publish a notice once each week for two consecutive weeks in a newspaper of general circulation in Yavapai County stating that the Director ~~director~~ shall conduct a hearing to determine whether the Prescott Active Management Area is no longer at safe-yield. After publishing notice in the manner described above, the Director ~~director~~ shall hold a hearing in the Prescott Active Management Area within 30 days of the last notice. Any person may appear at the hearing and submit oral or documentary evidence on the issue of whether the Prescott Active Management Area is no

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longer at safe-yield. Persons may submit written comments concerning matters discussed at the hearing within 30 days after the hearing. Within 180 days after the termination of the public comment period, the ~~Director~~ ~~director~~ shall enter a final decision and order determining either that the Prescott Active Management Area remains at safe-yield or that the Prescott Active Management Area is no longer at safe-yield.

- F. If the ~~Director~~ ~~director~~ enters a final decision and order determining that the Prescott Active Management Area is no longer at safe-yield, the ~~Director~~ ~~director~~ shall calculate the volume of groundwater which may be withdrawn consistent with the management goal of the active management area in accordance with subsection (A) ~~of this Section~~ by adding to the volume of assured water supply credits determined in accordance with subsection (M) ~~of this Section~~, the volume calculated as follows:
1. If the application is for a certificate of assured water supply:
 - a. Subtract the declaration year from 2025, unless the date of application occurs subsequent to the declaration year, in which case subtract the year of the date of application from 2025.
 - b. Determine the total volume of water, from any source, projected by the ~~Director~~ ~~director~~ to meet 100% of the applicant's water demands for the 15th calendar year after the date of application consistent with the conservation requirements established in the management plan in effect on the date of application for the municipal provider proposed to serve the applicant.
 - c. Multiply the number determined in subsection (F)(1)(a) by the amount calculated in subsection (F)(1)(b).
 - d. Divide the product obtained in subsection (F)(1)(c) by two. The minimum volume which may be calculated in this ~~subsection paragraph~~ is zero acre-feet.
 2. If the application is for a designation of assured water supply:
 - a. And, except as provided in subsection (F)(2)(c), the date of application occurs within 180 days after the declaration date:
 - i. Multiply 100 by the volume of groundwater withdrawn from within the active management area by the applicant during the declaration year or calendar year 1995, whichever volume is greater, consistent with the conservation requirements established for the applicant in the management plan in effect on the date of application.
 - ii. Determine the volume of the applicant's total water demand, from any source, for the declaration year consistent with the conservation requirements established for the applicant in the management plan in effect on the date of application.
 - iii. Determine the volume of the applicant's total water demand, from any source, for the 15th calendar year after the declaration year consistent with the conservation requirements established for the applicant in the management plan in effect on the date of application.
 - iv. Subtract the volume calculated in subsection (F)(2)(a)(ii) from the volume calculated in subsection (F)(2)(a)(iii).
 - v. Subtract the declaration year from 2025.
 - vi. Multiply the volume calculated in subsection (F)(2)(a)(iv) by the number calculated in subsection (F)(2)(a)(v).
 - vii. Divide the product obtained in subsection (F)(2)(a)(vi) by two.
 - viii. Add the volume calculated in subsection (F)(2)(a)(vii) to the volume calculated in subsection (F)(2)(a)(i).
 - b. And, except as provided in subsection (F)(2)(c) the date of application does not occur within 180 days after the declaration date, subtract from the volume calculated in subsection (F)(2)(a) the volume of groundwater calculated in subsection (F)(2)(b)(iii). The volume shall be calculated as follows:
 - i. Determine the volume of groundwater withdrawn by the applicant from within the active management area during the period beginning January 1 of the declaration year and ending either December 31 of the declaration year or December 31 of the calendar year prior to the date of the application, whichever is later.
 - ii. Multiply the volume of groundwater withdrawn by the applicant from within the active management area in the declaration year by the number of calendar years in the period beginning with the declaration year and ending with the calendar year prior to the date of application.
 - iii. Subtract from the volume calculated in subsection (F)(2)(b)(i) the volume calculated in subsection (F)(2)(b)(ii).
 - c. And the applicant did not exist as of the declaration date, or the date of application occurs after calendar year 2025, the maximum volume of groundwater which the applicant may use for the proposed use for 100 years from the date of application consistent with the achievement of the management goal for the Prescott Active Management Area is zero acre-feet.
 3. If the ~~Director~~ ~~director~~ receives an application for a certificate of assured water supply or a designation of assured water supply ~~before prior to~~ the declaration year, the ~~Director~~ ~~director~~ shall perform the calculations described in subsection (F)(1) or (2) after the ~~Director~~ ~~director~~ enters a final decision and order determining that the Prescott Active Management Area is no longer at safe-yield.

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G. Except as provided in subsection (I) or (J) ~~of this Section~~, with respect to the Phoenix and Tucson Active Management Areas, the ~~Director~~ director shall determine the volume of groundwater which a certificate or a designation of AWS applicant may withdraw from within the active management area for the proposed use for 100 years from the date of application consistent with the management goal of the active management area by adding to any volume of credits determined by the ~~Director~~ director, in accordance with subsections (K) and (M) ~~of this Section~~, the volume of groundwater calculated as follows:

1. If the application is for a certificate of assured water supply, multiply the applicable allocation factor located in the table below by the total volume of water, from any source, projected to meet 100% of the applicant's water demand in the 15th calendar year after the date of application, consistent with the applicable conservation requirements established for the municipal provider proposed to serve the applicant in the management plan in effect on the date of application:

LOCATION OF PROPOSED DEVELOPMENT	MANAGEMENT PERIOD / DATE OF APPLICATION	ALLOCATION FACTOR
TUCSON AMA	Second	15
	Third	8
	Fourth	4
	Fifth	2
	After Fifth	0
PHOENIX AMA	Second	7.5
	Third	4
	Fourth	2
	Fifth	1
	After Fifth	0

2. If the application is for a designation of assured water supply and the applicant provided water to its customers before ~~prior to~~ the effective date of this Article, multiply the total volume of water, from any source, consistent with the first intermediate conservation requirement established in the second management plan, provided by the applicant to its customers during the calendar year before ~~prior to~~ the effective date of this Article by 15 if the applicant is located in the Tucson Active Management Area or by 7.5 if the applicant is located in the Phoenix Active Management Area.
3. If the application is for a designation of assured water supply, and the applicant commences providing water to its customers on or after the effective date of this Article, zero acre-feet of groundwater.

H. Except as provided in subsection (I) or (J) ~~of this Section~~, with respect to the Pinal Active Management Area, the ~~Director~~ director shall determine the volume of groundwater ~~that which~~ an applicant for a certificate of assured water supply or a designation of assured water supply may withdraw from the active management area consistent with the achievement of the management goal of the active management area by adding the volume of assured water supply credits determined annually in accordance with subsection (M) ~~of this Section~~ to the volume calculated as follows:

1. If the applicant is a certificate applicant ~~that which~~ will be served by a small municipal provider or a municipal provider ~~that which~~ is required to comply with a total-gallons-per-capita-per-day requirement or a non-per capita requirement established in the management plan in effect on the date of application for the Pinal Active Management Area:
 - a. Determine the proposed development's 15-year build-out population; and;
 - b. Multiply the population determined in subsection (H)(1)(a) by the product of 125 gallons per capita per day and the number of days in the calendar year.
2. If the applicant is a certificate applicant ~~that which~~ will be served by an existing municipal provider ~~that which~~ is required to comply with a residential gallons-per-capita-per-day requirement established in the management plan in effect on the date of application for the Pinal Active Management Area, zero acre-feet.
3. If the applicant is a certificate applicant ~~that which~~ will be served by a new municipal provider ~~that which~~ is required to comply with a residential gallons-per-capita-per-day requirement established in the management plan in effect on the date of application for the Pinal Active Management Area:
 - a. Determine the proposed development's 15-year build-out population; and;
 - b. Multiply the population determined in subsection (H)(3)(a) by the product of 62.5 gallons-per-capita-per-day and the number of days in the calendar year.

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4. If the applicant is a designation of AWS applicant ~~that which~~ is a small municipal provider or a municipal provider ~~that which~~ is required to comply with a total gallons-per-capita-per-day requirement or a non-per capita program requirement established in the management plan in effect on the date of application for the Pinal Active Management Area:
 - a. Determine the applicant's service area population for the calendar year; ~~and-~~
 - b. Multiply the population determined in subsection (H)(4)(a) by the product of 125 gallons per capita per day and the number of days in the calendar year.
5. If the applicant is a designation of AWS applicant ~~that which~~ is an existing municipal provider ~~that which~~ is required to comply with a residential gallons-per-capita-per-day requirement established in the management plan in effect on the date of application for the Pinal Active Management Area, the largest volume of groundwater withdrawn by the applicant within the active management area in any one calendar year from calendar year 1980 through calendar year 1989.
6. If the applicant is a designation of AWS applicant ~~that which~~ is a new municipal provider ~~that which~~ is required to comply with a residential gallons-per-capita-per-day requirement established in the management plan in effect on the date of application for the Pinal Active Management Area:
 - a. Determine the applicant's service area population for the calendar year; ~~and-~~
 - b. Multiply the population determined in subsection (H)(6)(a) by the product of 62.5 gallons-per-capita-per-day and the number of days in the calendar year.
- I. If a municipal provider ~~that which~~ is not a deemed provider in the Phoenix, Tucson, or Pinal Active Management Areas files an application within 180 days after the effective date of this Article as required by R12-15-702(D), the Director ~~director~~ shall determine that the proposed use of the applicant will be consistent with the management goal of the active management area for calendar years 1996, 1997, and 1998, regardless of the volume of groundwater withdrawn by the applicant within the active management area. Beginning calendar year 1999, the applicant shall comply with the provisions of this Section.
- J. If a municipal provider ~~that which~~ is a deemed provider files an application to be designated on or before January 1, 1997, the Director ~~director~~ shall determine that the proposed use of the applicant is consistent with the management goal for the calendar years 1998, 1999, and 2000, regardless of the volume of groundwater withdrawn by the applicant within the active management area. Beginning calendar year 2001, the applicant shall comply with the provisions of this Section.
- K. After the Director ~~director~~ issues a designation of assured water supply to a municipal provider in the Tucson or Phoenix Active Management Area, the Director ~~director~~ shall, ~~before~~ prior to the beginning of each calendar year, add a volume of groundwater to the volume calculated for the applicant in subsection (G) ~~of this Section~~ in determining whether the use of the provider is consistent with the achievement of the management goal of the active management area. The Director ~~director~~ shall calculate the volume of groundwater by multiplying the provider's total water use, from any source, in the previous calendar year, by the standard incidental recharge factor of 4%. The Director ~~director~~ may establish a different incidental recharge factor for the provider if the provider demonstrates to the satisfaction of the Director ~~director~~ that the ratio of the average annual amount of incidental recharge expected to be attributable to the municipal provider during the management period to the average annual amount of water expected to be withdrawn, diverted, or received for delivery by the provider for use within its service area during the management period is different than 4%. If a provider applies for a variance from the standard incidental recharge factor, the provider shall do so in a manner consistent with A.R.S. § 45-565.01(D).
- L. The Director ~~director~~ shall establish an assured water supply credit for the extinguishment of a grandfathered groundwater right if all of the following conditions are met:
 1. The owner of the right submits to the Director ~~director~~ a notarized statement of intent to extinguish the grandfathered groundwater right.
 2. The certificate evidencing the grandfathered groundwater right is returned to the Director ~~director~~ or the Director ~~director~~ receives an affidavit evidencing that the certificate has been lost. If only a portion of a type 1, non-irrigation grandfathered right or irrigation grandfathered right is extinguished, the Director ~~director~~ shall issue a new certificate for the remainder of the right.
 3. If the right being extinguished is a type 1, non-irrigation grandfathered right or an irrigation grandfathered right, the owner of the right submits sufficient evidence of ownership of the land associated with the grandfathered groundwater right.
 4. If the grandfathered groundwater right is located in the Prescott Active Management Area, all of the following conditions are met:
 - a. The land to which the right is appurtenant has not been and will not be subdivided pursuant to a preliminary plat or a final plat that was approved by a city, town or county before August 21, 1998.
 - b. The land to which the right is appurtenant is not and will not be the location of a subdivision for which a complete and correct application for a certificate of assured water supply was submitted to the Director before August 21, 1998.

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- c. The land to which the right is appurtenant has not been physically developed for industrial, commercial or other non-irrigation use.
- M. The amount of the assured water supply credit established for extinguishing a grandfathered right is as follows:
1. For the extinguishment of an irrigation grandfathered right, or a portion of an irrigation grandfathered right thereof in the ~~Prescott~~, Phoenix, or Tucson Active Management Area, the amount calculated by multiplying 1.5 acre-feet per acre by the number of irrigation acres associated with the extinguished right and multiplying the product by the difference calculated by subtracting the calendar year of extinguishment from 2025. If only a portion of an irrigation grandfathered right is extinguished, only those irrigation acres associated with the portion of the right that which is extinguished shall be included in the calculation.
 2. For the extinguishment of an irrigation grandfathered right in the Pinal Active Management Area, after the right or a portion of the right thereof is extinguished, add annually the product of 3.0 acre-feet per acre multiplied by the number of irrigation acres associated with the extinguished right in each calendar year ~~before prior to~~ 2000, and the product of 1.5 acre-feet per acre multiplied by the number of irrigation acres associated with the extinguished right for each calendar year thereafter. If only a portion of an irrigation grandfathered right is extinguished, only those irrigation acres associated with the portion of the right that which is extinguished shall be included in the calculation.
 3. For the extinguishment of a type 1, non-irrigation grandfathered right or a portion of the non-irrigation grandfathered right thereof extinguished in the ~~Prescott~~, Phoenix, or Tucson Active Management Area, the amount calculated by:
 - a. Subtracting the calendar year of extinguishment from 2025.
 - b. Multiplying 1.5 acre-feet per acre by the number of acres to which the type 1, non-irrigation grandfathered right is appurtenant.
 - c. Multiplying the product calculated in subsection (M)(3)(b) by the difference calculated in subsection (M)(3)(a).
 4. For the extinguishment of a type 1, non-irrigation grandfathered right or a portion of the non-irrigation grandfathered right thereof in the Pinal Active Management Area, the amount calculated annually by multiplying 1.5 acre-feet per acre by the number of acres to which the type 1 non-irrigation right is appurtenant. If only a portion of the type 1 non-irrigation right is extinguished, only those acres associated with the portion of the right that which is extinguished shall be included in the calculation.
 5. For the extinguishment of a type 2, non-irrigation grandfathered right in the Prescott, Phoenix, or Tucson Active Management Area, the amount calculated by multiplying the number of acre-feet indicated on the certificate by the difference between the calendar year of extinguishment and 2025.
 6. For the extinguishment of a type 2, non-irrigation grandfathered right in the Pinal Active Management Area, an annual amount equal to the number of acre-feet indicated on the certificate.
 7. For the extinguishment of an irrigation grandfathered right or a type 1 non-irrigation grandfathered right in the Prescott Active Management Area:
 - a. Through December 31, 2010:
 - i. If the irrigation acres associated with the extinguished right were irrigated for at least 4 of the 6 calendar years preceding January 1, 2000, the amount calculated by multiplying 1.5 acre-feet per acre by the number of irrigation acres associated with the extinguished right and multiplying that product by 25.
 - ii. If the irrigation acres associated with the extinguished right were not irrigated for at least 4 of the 6 calendar years preceding January 1, 2000, the amount calculated by multiplying 1.5 acre-feet per acre by the number of irrigation acres associated with the extinguished right and multiplying the product by the difference calculated by subtracting the calendar year in which the statement of intent to extinguish is filed from 2025.
 - b. After December 31, 2010, the amount calculated by multiplying 1.5 acre-feet per acre by the number of irrigation acres associated with the extinguished right and multiplying the product by the difference calculated by subtracting the calendar year in which the statement of intent to extinguish is filed from 2025.
- N. A municipal provider receiving credits for the extinguishment of a grandfathered groundwater right may convey the credits. The holder of a certificate may not convey credits obtained for the extinguishment of a grandfathered groundwater right unless the credits are conveyed as part of the transfer of the certificate to which they have been applied.
- O. If an irrigation grandfathered right which is extinguished has a debit balance in its flexibility account established under A.R.S. § 45-467, the Director ~~director~~ shall subtract the amount of the debit from the amount of the assured water supply credit calculated in subsection (M) ~~of this Section~~.
- P. The Director ~~director~~ shall not give any assured water supply credit for the extinguishment of a type 1, non-irrigation grandfathered right that which was requested to be included by a city or town in the Tucson Active Management Area in the determination made under A.R.S. § 45-463(F) nor to the holder of a type 1, non-irrigation grandfathered right who the Director ~~director~~ determines is likely to continue to receive groundwater from an undesignated municipal provider pursuant to its service area right or pursuant to a groundwater withdrawal permit. The Director ~~director~~ shall not give any assured water supply credit for the extinguishment of a type 2, non-irrigation grandfathered right that which was issued for the purpose of allowing mineral extraction or the generation of electrical power.

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- Q. The volume of groundwater ~~that which~~ the ~~Director director~~ determines may be used by a person consistent with the achievement of the management goal of the active management area pursuant to subsection (F), (G), (K), or (M) ~~of this Section~~ may be used by the person in any calendar year.
- R. To determine compliance with the consistency with management goal requirements ~~of established in~~ this Section for the Prescott, Phoenix, or Tucson Active Management Area, the ~~Director director~~ shall maintain an account updated annually of the water supply and demand status for each holder of a certificate of assured water supply and each holder of a designation of assured water supply. The ~~Director director~~ shall subtract annually the volume of groundwater, except for groundwater excluded under subsection (T) ~~of this Section~~, ~~that is which was~~ withdrawn from within the applicable active management area and used by the holder of the certificate or designation, from the volume of groundwater ~~that which~~ the ~~Director director~~ has determined under subsections (F), (G), (K), and (M) ~~of this Section~~ that the holder of the certificate or designation may withdraw from within the active management area and use consistent with the achievement of the management goal of the active management area. The ~~Director director~~ shall determine that the use of a holder of a certificate or a designation is not consistent with the management goal of the active management area if the holder of the certificate or the designation has used more groundwater withdrawn from within the active management area than the volume ~~that which~~ the ~~Director director~~ has determined the holder may use consistent with the achievement of the management goal for the active management area.
- S. To determine compliance with the consistency with management goal requirement ~~of established in~~ this Section rule for the Pinal Active Management Area:
1. The ~~Director director~~ shall maintain an account updated annually of the groundwater supply and demand status for each holder of a certificate of assured water supply and each holder of a designation of assured water supply. After the ~~Director director~~ calculates under subsection (H) ~~of this Section~~ the volume of groundwater ~~that which~~ the holder of the certificate or designation may withdraw within the active management area and use for a calendar year consistent with the management goal of the active management area, the ~~Director director~~ shall determine compliance with this Section by determining the volume of groundwater withdrawn from within the active management area ~~that which~~ is used by the applicant during the calendar year.
 2. The ~~Director director~~ shall determine that the holder of a certificate or designation is not consistent with the management goal of the active management area if the holder of the certificate or the designation has used more groundwater withdrawn within the active management area during the calendar year than the maximum annual allotment of groundwater ~~that which~~ the ~~Director director~~ has determined the holder may use consistent with the achievement of the management goal for the active management area for the calendar year.
 3. If the ~~Director director~~ determines that the holder of a certificate or designation uses less groundwater withdrawn from within the active management area in any calendar year than the maximum annual allotment of groundwater established for the holder for that calendar year, the ~~Director director~~ shall add to the next calendar year's groundwater allotment the amount calculated by subtracting the volume of groundwater used in the calendar year from the maximum groundwater allotment for the calendar year.
- T. For a holder of a certificate or designation, the ~~Director director~~, upon application, shall exclude the following volumes of groundwater withdrawn within the applicable active management area and used by the holder in determining under subsections (R) and (S) ~~of this Section~~ whether the holder's use continues to be consistent with the achievement of the management goal for the active management area:
1. If the ~~Director director~~ has determined that a surface water supply is physically available to the holder under R12-15-703 and the volume of the supply actually available to the holder during a calendar year is equal to or less than the drought volume for the supply, the volume of groundwater, other than the groundwater ~~that which~~ is accounted for under subsections (R) or (S), withdrawn within the active management area ~~that, which~~, when combined with the holder's available surface water supply, is equal to or less than the holder's drought volume.
 2. The volume of groundwater withdrawn from within the active management area to which all of the following apply:
 - a. The ~~Director director~~ has received a written determination from the ~~Director director~~ of the Arizona Department of Environmental Quality stating that the quality of the groundwater pumped or exchanged fails to meet state aquifer water quality standards, that the groundwater is a threat to future drinking water supplies, and that the removal and use of the contaminated groundwater is an appropriate remedial action.
 - b. The groundwater pumped has either been treated or blended to achieve the water quality standards or exchanged for other water supplies ~~that which~~ achieve such standards.
 - c. The groundwater would not have otherwise been removed from the aquifer, or the withdrawal of the groundwater will accelerate the treatment of groundwater at a designated state or federal groundwater clean-up site.
 - d. The groundwater was withdrawn ~~before prior to~~ the end of calendar year 2025.
 3. Any volume of groundwater withdrawn within a portion of an active management area ~~that which~~ is exempt from conservation requirements ~~under pursuant to~~ A.R.S. Title 45 due to waterlogging. The ~~Director director~~ shall review the application of this exclusion on a periodic basis not to exceed 15 years.

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- U. For the purpose of performing the calculations prescribed in this Section, the Director ~~director~~ shall evaluate an application for a designation of assured water supply filed by a city or town ~~that which~~ is deemed to have an assured water supply under A.R.S. § 45-576(E) in the same manner as any other municipal provider.
- V. An applicant for a dry lot subdivision comprised of 20 or fewer lots is exempt from the requirements of this Section.